

(1) five members shall represent trust fund account holders, including both tribal and individual Indian Money accounts;

(2) two members shall have practical experience in trust fund and financial management;

(3) one member shall have practical experience in fiduciary investment management; and

(4) one member, from academia, shall have knowledge of general management of large organizations.

(b) Term

Each member shall serve a term of two years.

(c) FACA

The advisory board shall not be subject to the Federal Advisory Committee Act.

(d) Termination

The advisory board shall terminate upon termination of the Office of Special Trustee.

(Pub. L. 103-412, title III, § 306, Oct. 25, 1994, 108 Stat. 4249; Pub. L. 104-109, § 6(b), Feb. 12, 1996, 110 Stat. 764.)

REFERENCES IN TEXT

The Federal Advisory Committee Act, referred to in subsec. (c), is Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

AMENDMENTS

1996—Subsec. (d). Pub. L. 104-109 substituted “advisory board” for “Advisory Board”.

APPOINTMENT OF NEW MEMBERS

Pub. L. 108-7, div. F, title I, § 133, Feb. 20, 2003, 117 Stat. 243, provided that: “Within 90 days of enactment of this Act [Feb. 20, 2003] the Special Trustee for American Indians, in consultation with the Secretary of the Interior and the Tribes, shall appoint new members to the Special Trustee Advisory Board.”

SUBCHAPTER IV—AUTHORIZATION OF
APPROPRIATIONS

§ 4061. Authorization of appropriations

There is authorized to be appropriated such sums as may be necessary to carry out the provisions of this chapter.

(Pub. L. 103-412, title IV, § 401, Oct. 25, 1994, 108 Stat. 4249.)

**CHAPTER 43—NATIVE AMERICAN HOUSING
ASSISTANCE AND SELF-DETERMINATION**

Sec.

4101. Congressional findings.

4102. Administration through Office of Native American Programs.

4103. Definitions.

4104. Waiver of matching funds requirements in Indian housing programs.

(a) Authorization of waiver.

(b) Extent of waiver.

(c) Definition of housing program.

SUBCHAPTER I—BLOCK GRANTS AND GRANT
REQUIREMENTS

4111. Block grants.

(a) Authority.

(b) Plan requirement.

(c) Local cooperation agreement.

(d) Exemption from taxation.

Sec.

(e) Effect of failure to exempt from taxation.

(f) Amount.

(g) Use for affordable housing activities under plan.

(h) Administrative and planning expenses.

(i) Public-private partnerships.

4112. Indian housing plans.

(a) Plan submission.

(b) 5-year plan.

(c) 1-year plan.

(d) Participation of tribally designated housing entity.

(e) Coordination of plans.

(f) Regulations.

4113. Review of plans.

(a) Review and notice.

(b) Notice of reasons for determination of noncompliance.

(c) Review.

(d) Updates to plan.

(e) Effective date.

4114. Treatment of program income and labor standards.

(a) Program income.

(b) Labor standards.

4115. Environmental review.

(a) In general.

(b) Procedure.

(c) Certification.

(d) Environmental compliance.

4116. Regulations.

(a) Transition requirements.

(b) Final regulations.

(c) Effective date.

4117. Authorization of appropriations.

SUBCHAPTER II—AFFORDABLE HOUSING
ACTIVITIES

4131. National objectives and eligible families.

(a) Primary objective.

(b) Eligible families.

4132. Eligible affordable housing activities.

4133. Program requirements.

(a) Rents.

(b) Maintenance and efficient operation.

(c) Insurance coverage.

(d) Eligibility for admission.

(e) Management and maintenance.

4134. Types of investments.

(a) In general.

(b) Investments.

4135. Low-income requirement and income targeting.

(a) In general.

(b) Exception.

4136. Repealed.

4137. Lease requirements and tenant selection.

(a) Leases.

(b) Tenant and homebuyer selection.

4138. Availability of records.

(a) Provision of information.

(b) Exception.

(c) Confidentiality.

4139. Noncompliance with affordable housing requirement.

4140. Continued use of amounts for affordable housing.

SUBCHAPTER III—ALLOCATION OF GRANT
AMOUNTS

4151. Annual allocation.

4152. Allocation formula.

(a) Establishment.

(b) Factors for determination of need.

(c) Other factors for consideration.

(d) Funding for public housing operation and modernization.

Sec.		Sec.	
	(e) Effective date.	4212.	Training and technical assistance.
	SUBCHAPTER IV—COMPLIANCE, AUDITS, AND REPORTS		SUBCHAPTER VIII—HOUSING ASSISTANCE FOR NATIVE HAWAIIANS
4161.	Remedies for noncompliance.	4221.	Definitions.
	(a) Actions by Secretary affecting grant amounts.	4222.	Block grants for affordable housing activities.
	(b) Noncompliance because of technical incapacity.		(a) Grant authority.
	(c) Referral for civil action.		(b) Plan requirement.
	(d) Review.		(c) Use of funds for affordable housing activities under plan.
4162.	Replacement of recipient.		(d) Administrative expenses.
	(a) Authority.		(e) Public-private partnerships.
	(b) Conditions of removal.	4223.	Housing plan.
	(c) Choice and term of replacement.		(a) Plan submission.
4163.	Monitoring of compliance.		(b) Five-year plan.
	(a) Enforceable agreements.		(c) One-year plan.
	(b) Periodic monitoring.		(d) Applicability of civil rights statutes.
	(c) Performance measures.		(e) Use of nonprofit organizations.
4164.	Performance reports.	4224.	Review of plans.
	(a) Requirement.		(a) Review and notice.
	(b) Content.		(b) Notice of reasons for determination of noncompliance.
	(c) Submission.		(c) Review.
	(d) Public availability.		(d) Updates to plan.
4165.	Review and audit by Secretary.		(e) Effective date.
	(a) Requirements under chapter 75 of title 31.	4225.	Treatment of program income and labor standards.
	(b) Additional reviews and audits.		(a) Program income.
	(c) Review of reports.		(b) Labor standards.
	(d) Effect of reviews.	4226.	Environmental review.
4166.	GAO audits.		(a) In general.
4167.	Reports to Congress.		(b) Procedure.
	(a) In general.		(c) Certification.
	(b) Related reports.	4227.	Regulations.
4168.	Public availability of information.	4228.	Affordable housing activities.
	SUBCHAPTER V—TERMINATION OF ASSISTANCE FOR INDIAN TRIBES UNDER INCORPORATED PROGRAMS		(a) National objectives and eligible families.
4181.	Termination of Indian housing assistance under United States Housing Act of 1937.	4229.	Eligible affordable housing activities.
	(a) Termination of assistance.		(a) In general.
	(b) Termination of restrictions on use of Indian housing.		(b) Activities.
4182.	Termination of new commitments for rental assistance.	4230.	Program requirements.
4183.	Savings provision.		(a) Rents.
	(a) Existing rights and duties.		(b) Maintenance and efficient operation.
	(b) Obligations under repealed provisions.		(c) Insurance coverage.
			(d) Eligibility for admission.
			(e) Management and maintenance.
		4231.	Types of investments.
			(a) In general.
			(b) Investments.
		4232.	Low-income requirement and income targeting.
			(a) In general.
			(b) Exception.
4191.	Authority and requirements.	4233.	Lease requirements and tenant selection.
	(a) Authority.		(a) Leases.
	(b) Terms of loans.		(b) Tenant or homebuyer selection.
	(c) Limitation on outstanding guarantees.	4234.	Repayment.
	(d) Limitation on percentage.	4235.	Annual allocation.
4192.	Security and repayment.	4236.	Allocation formula.
	(a) Requirements on issuer.		(a) Establishment.
	(b) Repayment from grant amounts.		(b) Factors for determination of need.
	(c) Full faith and credit.		(c) Other factors for consideration.
4193.	Payment of interest.		(d) Effective date.
4194.	Training and information.	4237.	Remedies for noncompliance.
4195.	Limitations on amount of guarantees.		(a) Actions by Secretary affecting grant amounts.
	(a) Aggregate fiscal year limitation.		(b) Noncompliance because of a technical incapacity.
	(b) Authorization of appropriations for credit subsidy.		(c) Referral for civil action.
	(c) Aggregate outstanding limitation.		(d) Review.
	(d) Fiscal year limitations on tribes.	4238.	Monitoring of compliance.
			(a) Enforceable agreements.
			(b) Periodic monitoring.
			(c) Performance measures.
		4239.	Performance reports.
			(a) Requirement.
			(b) Content.
			(c) Submissions.
4211.	50-year leasehold interest in trust or restricted lands for housing purposes.		
	(a) Authority to lease.		
	(b) Term.		
	(c) Rule of construction.		
	(d) Self-implementation.		

Sec.

- (d) Public availability.
- 4240. Review and audit by Secretary.
 - (a) Annual review.
 - (b) Report by Secretary.
 - (c) Effect of reviews.
- 4241. Government Accountability Office audits.
- 4242. Reports to Congress.
 - (a) In general.
 - (b) Related reports.
- 4243. Authorization of appropriations.

§ 4101. Congressional findings

The Congress finds that—

(1) the Federal Government has a responsibility to promote the general welfare of the Nation—

(A) by using Federal resources to aid families and individuals seeking affordable homes in safe and healthy environments and, in particular, assisting responsible, deserving citizens who cannot provide fully for themselves because of temporary circumstances or factors beyond their control;

(B) by working to ensure a thriving national economy and a strong private housing market; and

(C) by developing effective partnerships among the Federal Government, State, tribal, and local governments, and private entities that allow government to accept responsibility for fostering the development of a healthy marketplace and allow families to prosper without government involvement in their day-to-day activities;

(2) there exists a unique relationship between the Government of the United States and the governments of Indian tribes and a unique Federal responsibility to Indian people;

(3) the Constitution of the United States invests the Congress with plenary power over the field of Indian affairs, and through treaties, statutes, and historical relations with Indian tribes, the United States has undertaken a unique trust responsibility to protect and support Indian tribes and Indian people;

(4) the Congress, through treaties, statutes, and the general course of dealing with Indian tribes, has assumed a trust responsibility for the protection and preservation of Indian tribes and for working with tribes and their members to improve their housing conditions and socioeconomic status so that they are able to take greater responsibility for their own economic condition;

(5) providing affordable homes in safe and healthy environments is an essential element in the special role of the United States in helping tribes and their members to improve their housing conditions and socioeconomic status;

(6) the need for affordable homes in safe and healthy environments on Indian reservations, in Indian communities, and in Native Alaskan villages is acute and the Federal Government should work not only to provide housing assistance, but also, to the extent practicable, to assist in the development of private housing finance mechanisms on Indian lands to achieve the goals of economic self-sufficiency and self-determination for tribes and their members; and

(7) Federal assistance to meet these responsibilities should be provided in a manner that recognizes the right of Indian self-determination and tribal self-governance by making such assistance available directly to the Indian tribes or tribally designated entities under authorities similar to those accorded Indian tribes in Public Law 93-638 (25 U.S.C. 450 et seq.).

(Pub. L. 104-330, § 2, Oct. 26, 1996, 110 Stat. 4017.)

REFERENCES IN TEXT

Public Law 93-638, referred to in par. (7), is Pub. L. 93-638, Jan. 4, 1975, 88 Stat. 2203, as amended, known as the Indian Self-Determination and Education Assistance Act, which is classified principally to subchapter II (§ 450 et seq.) of chapter 14 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 450 of this title and Tables.

EFFECTIVE DATE

Section 107 of Pub. L. 104-330 provided that: “Except as otherwise expressly provided in this Act [see Short Title note below], this Act and the amendments made by this Act shall take effect on October 1, 1997.”

SHORT TITLE OF 2004 AMENDMENT

Pub. L. 108-393, § 1, Oct. 30, 2004, 118 Stat. 2246, provided that: “This Act [amending section 4191 of this title] may be cited as the ‘Homeownership Opportunities for Native Americans Act of 2004’.”

SHORT TITLE OF 2002 AMENDMENT

Pub. L. 107-292, § 1, Nov. 13, 2002, 116 Stat. 2053, provided that: “This Act [amending sections 4103, 4111, 4114, 4116, 4117, 4132, 4191, 4195, and 4212 of this title and section 1715z-13a of Title 12, Banks and Banking] may be cited as the ‘Native American Housing Assistance and Self-Determination Reauthorization Act of 2002’.”

SHORT TITLE OF 2000 AMENDMENTS

Pub. L. 106-569, title V, § 511, Dec. 27, 2000, 114 Stat. 2966, provided that: “This subtitle [subtitle B (§§ 511-514) of title V of Pub. L. 106-569, enacting subchapter VIII of this chapter, section 1715z-13b of Title 12, Banks and Banking, and provisions set out as notes under section 4221 of this title] may be cited as the ‘Hawaiian Homelands Homeownership Act of 2000’.”

Pub. L. 106-568, § 1, Dec. 27, 2000, 114 Stat. 2868, provided that: “This Act [see Tables for classification] may be cited as the ‘Omnibus Indian Advancement Act’.”

Pub. L. 106-568, title II, § 201, Dec. 27, 2000, 114 Stat. 2872, provided that: “This title [enacting subchapter VIII of this chapter, section 1715z-13b of Title 12, Banks and Banking, and provisions set out as notes under section 4221 of this title] may be cited as the ‘Hawaiian Homelands Homeownership Act of 2000’.”

SHORT TITLE

Section 1(a) of Pub. L. 104-330 provided that: “This Act [enacting this chapter and section 12899h-1 of Title 42, The Public Health and Welfare, amending sections 1715z-13a and 1721 of Title 12, Banks and Banking, and sections 1437a, 1437c to 1437e, 1437g, 1437i, 1437n, 1437u to 1437x, 1437aaa-5, 1437aaa-6, 1439, 11371 to 11376, 11382, 11401, 11403g, 11408, 11902 to 11905, 12747, and 12838 of Title 42, repealing sections 1437aa to 1437ee of Title 42, enacting provisions set out as notes under this section and sections 4181 and 4211 of this title and sections 11371, 12747, and 12899h-1 of Title 42, amending provisions set out as a note under section 11301 of Title 42, and repealing provisions set out as a note under section 1701z-6 of Title 12] may be cited as the ‘Native American Housing Assistance and Self-Determination Act of 1996’.”

§ 4102. Administration through Office of Native American Programs

The Secretary of Housing and Urban Development shall carry out this chapter through the Office of Native American Programs of the Department of Housing and Urban Development.

(Pub. L. 104-330, §3, Oct. 26, 1996, 110 Stat. 4018.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original “this Act”, meaning Pub. L. 104-330, Oct. 26, 1996, 110 Stat. 4016, as amended, known as the Native American Housing Assistance and Self-Determination Act of 1996. For complete classification of this Act to the Code, see Short Title note set out under section 4101 of this title and Tables.

EFFECTIVE DATE

Section effective Oct. 1, 1997, except as otherwise expressly provided, see section 107 of Pub. L. 104-330, set out as a note under section 4101 of this title.

§ 4103. Definitions

For purposes of this chapter, the following definitions shall apply:

(1) Adjusted income

The term “adjusted income” means the annual income that remains after excluding the following amounts:

(A) Youths, students, and persons with disabilities

\$480 for each member of the family residing in the household (other than the head of the household or the spouse of the head of the household)—

(i) who is under 18 years of age; or

(ii) who is—

(I) 18 years of age or older; and

(II) a person with disabilities or a full-time student.

(B) Elderly and disabled families

\$400 for an elderly or disabled family.

(C) Medical and attendant expenses

The amount by which 3 percent of the annual income of the family is exceeded by the aggregate of—

(i) medical expenses, in the case of an elderly or disabled family; and

(ii) reasonable attendant care and auxiliary apparatus expenses for each family member who is a person with disabilities, to the extent necessary to enable any member of the family (including a member who is a person with disabilities) to be employed.

(D) Child care expenses

Child care expenses, to the extent necessary to enable another member of the family to be employed or to further his or her education.

(E) Earned income of minors

The amount of any earned income of any member of the family who is less than 18 years of age.

(F) Travel expenses

Excessive travel expenses, not to exceed \$25 per family per week, for employment- or education-related travel.

(G) Other amounts

Such other amounts as may be provided in the Indian housing plan for an Indian tribe.

(2) Affordable housing

The term “affordable housing” means housing that complies with the requirements for affordable housing under subchapter II of this chapter. The term includes permanent housing for homeless persons who are persons with disabilities, transitional housing, and single room occupancy housing.

(3) Drug-related criminal activity

The term “drug-related criminal activity” means the illegal manufacture, sale, distribution, use, or possession with intent to manufacture, sell, distribute, or use, of a controlled substance (as such term is defined in section 802 of title 21).

(4) Elderly families and near-elderly families

The terms “elderly family” and “near-elderly family” mean a family whose head (or his or her spouse), or whose sole member, is an elderly person or a near-elderly person, respectively. Such terms include 2 or more elderly persons or near-elderly persons living together, and 1 or more such persons living with 1 or more persons determined under the Indian housing plan for the agency to be essential to their care or well-being.

(5) Elderly person

The term “elderly person” means a person who is at least 62 years of age.

(6) Family

The term “family” includes a family with or without children, an elderly family, a near-elderly family, a disabled family, and a single person.

(7) Grant beneficiary

The term “grant beneficiary” means the Indian tribe or tribes on behalf of which a grant is made under this chapter to a recipient.

(8) Income

The term “income” means income from all sources of each member of the household, as determined in accordance with criteria prescribed by the Secretary, except that the following amounts may not be considered as income under this paragraph:

(A) Any amounts not actually received by the family.

(B) Any amounts that would be eligible for exclusion under section 1382b(a)(7) of title 42.

(9) Indian

The term “Indian” means any person who is a member of an Indian tribe.

(10) Indian area

The term “Indian area” means the area within which an Indian tribe or a tribally designated housing entity, as authorized by 1 or more Indian tribes, provides assistance under this chapter for affordable housing.

(11) Indian housing plan

The term “Indian housing plan” means a plan under section 4112 of this title.

(12) Indian tribe**(A) In general**

The term “Indian tribe” means a tribe that is a federally recognized tribe or a State recognized tribe.

(B) Federally recognized tribe

The term “federally recognized tribe” means any Indian tribe, band, nation, or other organized group or community of Indians, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act [43 U.S.C. 1601 et seq.], that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians pursuant to the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.).

(C) State recognized tribe**(i) In general**

The term “State recognized tribe” means any tribe, band, nation, pueblo, village, or community—

(I) that has been recognized as an Indian tribe by any State; and

(II) for which an Indian Housing Authority has, before the effective date under section 705, entered into a contract with the Secretary pursuant to the United States Housing Act of 1937 [42 U.S.C. 1437 et seq.] for housing for Indian families and has received funding pursuant to such contract within the 5-year period ending upon such effective date.

(ii) Conditions

Notwithstanding clause (i)—

(I) the allocation formula under section 4152 of this title shall be determined for a State recognized tribe under tribal membership eligibility criteria in existence on October 26, 1996; and

(II) nothing in this paragraph shall be construed to confer upon a State recognized tribe any rights, privileges, responsibilities, or obligations otherwise accorded groups recognized as Indian tribes by the United States for other purposes.

(13) Low-income family

The term “low-income family” means a family whose income does not exceed 80 percent of the median income for the area, as determined by the Secretary with adjustments for smaller and larger families, except that the Secretary may, for purposes of this paragraph, establish income ceilings higher or lower than 80 percent of the median for the area on the basis of the findings of the Secretary or the agency that such variations are necessary because of prevailing levels of construction costs or unusually high or low family incomes.

(14) Median income

The term “median income” means, with respect to an area that is an Indian area, the greater of—

(A) the median income for the Indian area, which the Secretary shall determine; or

(B) the median income for the United States.

(15) Near-elderly person

The term “near-elderly person” means a person who is at least 55 years of age and less than 62 years of age.

(16) Nonprofit

The term “nonprofit” means, with respect to an organization, association, corporation, or other entity, that no part of the net earnings of the entity inures to the benefit of any member, founder, contributor, or individual.

(17) Person with disabilities

The term “person with disabilities” means a person who—

(A) has a disability as defined in section 423 of title 42;

(B) is determined, pursuant to regulations issued by the Secretary, to have a physical, mental, or emotional impairment which—

(i) is expected to be of long-continued and indefinite duration;

(ii) substantially impedes his or her ability to live independently; and

(iii) is of such a nature that such ability could be improved by more suitable housing conditions; or

(C) has a developmental disability as defined in section 15002 of title 42.

Such term shall not exclude persons who have the disease of acquired immunodeficiency syndrome or any conditions arising from the etiologic agent for acquired immunodeficiency syndrome. Notwithstanding any other provision of law, no individual shall be considered a person with disabilities, for purposes of eligibility for housing assisted under this chapter, solely on the basis of any drug or alcohol dependence. The Secretary shall consult with other appropriate Federal agencies to implement the preceding sentence.

(18) Recipient

The term “recipient” means an Indian tribe or the entity for one or more Indian tribes that is authorized to receive grant amounts under this chapter on behalf of the tribe or tribes.

(19) Secretary

Except as otherwise specifically provided in this chapter, the term “Secretary” means the Secretary of Housing and Urban Development.

(20) State

The term “State” means the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, the Virgin Islands, American Samoa, and any other territory or possession of the United States and Indian tribes.

(21) Tribally designated housing entity

The terms “tribally designated housing entity” and “housing entity” have the following meaning:

(A) Existing IHA's

With respect to any Indian tribe that has not taken action under subparagraph (B), and for which an Indian housing authority—

(i) was established for purposes of the United States Housing Act of 1937 [42 U.S.C. 1437 et seq.] before October 26, 1996, that meets the requirements under the United States Housing Act of 1937,

(ii) is acting on October 26, 1996, as the Indian housing authority for the tribe, and

(iii) is not an Indian tribe for purposes of this chapter,

the terms mean such Indian housing authority.

(B) Other entities

With respect to any Indian tribe that, pursuant to this chapter, authorizes an entity other than the tribal government to receive grant amounts and provide assistance under this chapter for affordable housing for Indians, which entity is established—

(i) by exercise of the power of self-government of one or more Indian tribes independent of State law, or

(ii) by operation of State law providing specifically for housing authorities or housing entities for Indians, including regional housing authorities in the State of Alaska,

the terms mean such entity.

(C) Establishment

A tribally designated housing entity may be authorized or established by one or more Indian tribes to act on behalf of each such tribe authorizing or establishing the housing entity.

(22) Housing related community development

(A) In general

The term “housing related community development” means any tribally-owned and operated facility, business, activity, or infrastructure that—

(i) is necessary to the direct construction of reservation housing; and

(ii) would help an Indian tribe or its tribally-designated housing authority reduce the cost of construction of Indian housing or otherwise promote the findings of this chapter.

(B) Exclusion

The term “housing and community development” does not include any activity conducted by any Indian tribe under the Indian Gaming Regulatory Act [25 U.S.C. 2701 et seq.].

(Pub. L. 104-330, § 4, Oct. 26, 1996, 110 Stat. 4018; Pub. L. 105-256, § 13(b), Oct. 14, 1998, 112 Stat. 1900; Pub. L. 105-276, title V, § 595(e)(1), (2), Oct. 21, 1998, 112 Stat. 2656; Pub. L. 106-402, title IV, § 401(b)(2), Oct. 30, 2000, 114 Stat. 1737; Pub. L. 107-292, § 3, Nov. 13, 2002, 116 Stat. 2053.)

REFERENCES IN TEXT

The Alaska Native Claims Settlement Act, referred to in par. (12)(B), is Pub. L. 92-203, Dec. 18, 1971, 85 Stat. 688, as amended, which is classified generally to chapter 33 (§1601 et seq.) of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 43 and Tables.

The Indian Self-Determination and Education Assistance Act, referred to in par. (12)(B), is Pub. L. 93-638, Jan. 4, 1975, 88 Stat. 2203, as amended, which is classified principally to subchapter II (§450 et seq.) of chapter 14 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 450 of this title and Tables.

For the effective date under section 705, referred to in par. (12)(C)(i)(II), as Oct. 26, 1996, see section 705 of Pub. L. 104-330, set out as an Effective Date note under section 4211 of this title.

The United States Housing Act of 1937, referred to in pars. (12)(C)(i)(II) and (21)(A)(i), is act Sept. 1, 1937, ch. 896, as revised generally by Pub. L. 93-383, title II, §201(a), Aug. 22, 1974, 88 Stat. 653, which is classified generally to chapter 8 (§1437 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 1437 of Title 42 and Tables.

The Indian Gaming Regulatory Act, referred to in par. (22)(B), is Pub. L. 100-497, Oct. 17, 1988, 102 Stat. 2467, as amended, which is classified principally to chapter 29 (§2701 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2701 of this title and Tables.

AMENDMENTS

2002—Par. (22). Pub. L. 107-292 added par. (22).

2000—Par. (17)(C). Pub. L. 106-402 substituted “as defined in section 15002 of title 42” for “as defined in section 6001 of title 42”.

1998—Par. (10). Pub. L. 105-276, §595(e)(1), amended heading and text of par. (10) generally. Prior to amendment, text read as follows: “The term ‘Indian area’ means the area within which a tribally designated housing entity is authorized by one or more Indian tribes to provide assistance under this chapter for affordable housing.”

Par. (12)(B). Pub. L. 105-256 substituted “Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.)” for “Indian Self-Determination and Education Assistance Act of 1975”.

Par. (12)(C)(i)(II). Pub. L. 105-276, §595(e)(2), substituted “705” for “107”.

EFFECTIVE DATE

Section effective Oct. 1, 1997, except as otherwise expressly provided, see section 107 of Pub. L. 104-330, set out as a note under section 4101 of this title.

§ 4104. Waiver of matching funds requirements in Indian housing programs

(a) Authorization of waiver

For any housing program that provides assistance through any Indian housing authority, the Secretary of Housing and Urban Development may provide assistance under such program in any fiscal year notwithstanding any other provision of law that requires the Indian housing authority to provide amounts to match or supplement the amounts provided under such program, if the Indian housing authority has not received amounts for such fiscal year under title I of the Housing and Community Development Act of 1974 [42 U.S.C. 5301 et seq.].

(b) Extent of waiver

The authority under subsection (a) of this section to provide assistance notwithstanding requirements regarding matching or supplemental amounts shall be effective only to the extent provided by the Secretary, which shall not extend beyond the fiscal year in which the waiver is made or beyond the receipt of any amounts by an Indian housing authority under title I of the Housing and Community Development Act of 1974 [42 U.S.C. 5301 et seq.].

(c) Definition of housing program

For purposes of this section, the term “housing program” means a program under the administration of the Secretary of Housing and Urban Development or the Secretary of Agriculture (through the Administrator of the Farmers Home Administration) that provides assistance in the form of contracts, grants, loans, cooperative agreements, or any other form of assistance (including the insurance or guarantee of a loan, mortgage, or pool of mortgages) for housing.

(Pub. L. 101-625, title IX, § 959, Nov. 28, 1990, 104 Stat. 4423.)

REFERENCES IN TEXT

The Housing and Community Development Act of 1974, referred to in subsecs. (a) and (b), is Pub. L. 93-383, Aug. 22, 1974, 88 Stat. 633, as amended. Title I of the Act is classified principally to chapter 69 (§ 5301 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 5301 of Title 42 and Tables.

CODIFICATION

Section was enacted as part of the Cranston-Gonzalez National Affordable Housing Act, and not as part of the Native American Housing Assistance and Self-Determination Act of 1996 which comprises this chapter.

Section was formerly classified to section 1437ff of Title 42, The Public Health and Welfare.

SUBCHAPTER I—BLOCK GRANTS AND GRANT REQUIREMENTS

§ 4111. Block grants**(a) Authority**

For each fiscal year, the Secretary shall (to the extent amounts are made available to carry out this chapter) make grants under this section on behalf of Indian tribes to carry out affordable housing activities. Under such a grant on behalf of an Indian tribe, the Secretary shall provide the grant amounts for the tribe directly to the recipient for the tribe.

(b) Plan requirement**(1) In general**

The Secretary may make a grant under this chapter on behalf of an Indian tribe for a fiscal year only if—

(A) the Indian tribe has submitted to the Secretary an Indian housing plan for such fiscal year under section 4112 of this title; and

(B) the plan has been determined under section 4113 of this title to comply with the requirements of section 4112 of this title.

(2) Waiver

The Secretary may waive the applicability of the requirements under paragraph (1), in whole or in part, for a period of not more than 90 days, if the Secretary determines that an Indian tribe has not complied with, or is unable to comply with, those requirements due to exigent circumstances beyond the control of the Indian tribe.

(c) Local cooperation agreement

Notwithstanding any other provision of this chapter, grant amounts provided under this

chapter on behalf of an Indian tribe may not be used for rental or lease-purchase homeownership units that are owned by the recipient for the tribe unless the governing body of the locality within which the property subject to the development activities to be assisted with the grant amounts is or will be situated has entered into an agreement with the recipient for the tribe providing for local cooperation required by the Secretary pursuant to this chapter. The Secretary may waive the requirements of this subsection and subsection (d) of this section if the recipient has made a good faith effort to fulfill the requirements of this subsection and subsection (d) of this section and agrees to make payments in lieu of taxes to the appropriate taxing authority in an amount consistent with the requirements of subsection (d)(2) of this section until such time as the matter of making such payments has been resolved in accordance with subsection (d) of this section.

(d) Exemption from taxation

Notwithstanding any other provision of this chapter, grant amounts provided under this chapter on behalf of an Indian tribe may not be used for affordable housing activities under this chapter for rental or lease-purchase dwelling units developed under the United States Housing Act of 1937 (42 U.S.C. 1437 et seq.) or with amounts provided under this chapter that are owned by the recipient for the tribe unless—

(1) such dwelling units (which, in the case of units in a multi-unit project, shall be exclusive of any portions of the project not developed under the United States Housing Act of 1937 [42 U.S.C. 1437 et seq.] or with amounts provided under this chapter) are exempt from all real and personal property taxes levied or imposed by any State, tribe, city, county, or other political subdivision; and

(2) the recipient for the tribe makes annual payments of user fees to compensate such governments for the costs of providing governmental services, including police and fire protection, roads, water and sewerage systems, utilities systems and related facilities, or payments in lieu of taxes to such taxing authority, in an amount equal to the greater of \$150 per dwelling unit or 10 percent of the difference between the shelter rent and the utility cost, or such lesser amount as—

(A) is prescribed by State, tribal, or local law;

(B) is agreed to by the local governing body in the agreement under subsection (c) of this section; or

(C) the recipient and the local governing body agree that such user fees or payments in lieu of taxes shall not be made.

(e) Effect of failure to exempt from taxation

Notwithstanding subsection (d) of this section, a grant recipient that does not comply with the requirements under such subsection may receive a block grant under this chapter, but only if the tribe, State, city, county, or other political subdivision in which the affordable housing development is located contributes, in the form of cash or tax remission, the amount by which the taxes paid with respect to the development exceed the amounts prescribed in subsection (d)(2) of this section.

(f) Amount

Except as otherwise provided under this chapter, the amount of a grant under this section to a recipient for a fiscal year shall be—

(1) in the case of a recipient whose grant beneficiary is a single Indian tribe, the amount of the allocation under section 4151 of this title for the Indian tribe; and

(2) in the case of a recipient whose grant beneficiary is more than 1 Indian tribe, the sum of the amounts of the allocations under section 4151 of this title for each such Indian tribe.

(g) Use for affordable housing activities under plan

Except as provided in subsection (h) of this section, amounts provided under a grant under this section may be used only for affordable housing activities under subchapter II of this chapter that are consistent with an Indian housing plan approved under section 4113 of this title.

(h) Administrative and planning expenses

The Secretary shall, by regulation, authorize each recipient to use a percentage of any grant amounts received under this chapter for comprehensive housing and community development planning activities and for any reasonable administrative and planning expenses of the recipient relating to carrying out this chapter and activities assisted with such amounts, which may include costs for salaries of individuals engaged in administering and managing affordable housing activities assisted with grant amounts provided under this chapter and expenses of preparing an Indian housing plan under section 4112 of this title.

(i) Public-private partnerships

Each recipient shall make all reasonable efforts, consistent with the purposes of this chapter, to maximize participation by the private sector, including nonprofit organizations and for-profit entities, in implementing the approved Indian housing plan.

(Pub. L. 104-330, title I, §101, Oct. 26, 1996, 110 Stat. 4022; Pub. L. 105-276, title V, §595(e)(3), (4), Oct. 21, 1998, 112 Stat. 2656, 2657; Pub. L. 106-568, title X, §1003(a), Dec. 27, 2000, 114 Stat. 2925; Pub. L. 106-569, title V, §503(a), Dec. 27, 2000, 114 Stat. 2961; Pub. L. 107-292, §4, Nov. 13, 2002, 116 Stat. 2054.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original “this Act”, meaning Pub. L. 104-330, Oct. 26, 1996, 110 Stat. 4016, as amended, known as the Native American Housing Assistance and Self-Determination Act of 1996. For complete classification of this Act to the Code, see Short Title note set out under section 4101 of this title and Tables.

The United States Housing Act of 1937, referred to in subsec. (d), is act Sept. 1, 1937, ch. 896, as revised generally by Pub. L. 93-383, title II, §201(a), Aug. 22, 1974, 88 Stat. 653, which is classified generally to chapter 8 (§1437 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 1437 of Title 42 and Tables.

AMENDMENTS

2002—Subsec. (h). Pub. L. 107-292 inserted “and planning” after “Administrative” in heading and “for com-

prehensive housing and community development planning activities and” after “received under this chapter” in text.

2000—Subsec. (b)(2). Pub. L. 106-568, §1003(a)(1), and Pub. L. 106-569, §503(a)(1), amended par. (2) identically, substituting “for a period of not more than 90 days, if the Secretary determines that an Indian tribe has not complied with, or is unable to comply with, those requirements due to exigent circumstances beyond the control of the Indian tribe.” for “if the Secretary finds that an Indian tribe has not complied or cannot comply with such requirements due to circumstances beyond the control of the tribe.”

Subsec. (c). Pub. L. 106-568, §1003(a)(2), and Pub. L. 106-569, §503(a)(2), amended subsec. (c) identically, inserting at end “The Secretary may waive the requirements of this subsection and subsection (d) of this section if the recipient has made a good faith effort to fulfill the requirements of this subsection and subsection (d) of this section and agrees to make payments in lieu of taxes to the appropriate taxing authority in an amount consistent with the requirements of subsection (d)(2) of this section until such time as the matter of making such payments has been resolved in accordance with subsection (d) of this section.”

1998—Subsec. (c). Pub. L. 105-276, §595(e)(3), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: “The Secretary may not make any grant under this chapter on behalf of an Indian tribe unless the governing body of the locality within which any affordable housing to be assisted with the grant amounts will be situated has entered into an agreement with the recipient for the tribe providing for local cooperation required by the Secretary pursuant to this chapter.”

Subsec. (d). Pub. L. 105-276, §595(e)(4)(A), added subsec. (d) heading, introductory provisions, and par. (1), and struck out former subsec. (d) heading, introductory provisions, and par. (1). Text read as follows: “A grant recipient for an Indian tribe may receive a block grant under this chapter only if—

“(1) the affordable housing assisted with grant amounts received by the recipient (exclusive of any portions not assisted with amounts provided under this chapter) is exempt from all real and personal property taxes levied or imposed by any State, tribe, city, county, or other political subdivision; and”.

Subsec. (d)(2). Pub. L. 105-276, §595(e)(4)(B), inserted “for the tribe” after “the recipient” in introductory provisions.

EFFECTIVE DATE

Section effective Oct. 1, 1997, except as otherwise expressly provided, see section 107 of Pub. L. 104-330, set out as a note under section 4101 of this title.

§ 4112. Indian housing plans**(a) Plan submission**

The Secretary shall provide—

(1)(A) for an Indian tribe to submit to the Secretary, for each fiscal year, a housing plan under this section for the tribe; or

(B) for the tribally designated housing entity for the tribe to submit the plan as provided in subsection (d) of this section for the tribe; and

(2) for the review of such plans.

(b) 5-year plan

Each housing plan under this section shall be in a form prescribed by the Secretary and shall contain, with respect to the 5-year period beginning with the fiscal year for which the plan is submitted, the following information:

(1) Mission statement

A general statement of the mission of the Indian tribe to serve the needs of the low-in-

come families in the jurisdiction of the Indian tribe during the period.

(2) Goals and objectives

A statement of the goals and objectives of the Indian tribe to enable the tribe to serve the needs identified in paragraph (1) during the period.

(3) Activities plan

An overview of the activities planned during the period including an analysis of the manner in which the activities will enable the tribe to meet its mission, goals, and objectives.

(c) 1-year plan

A housing plan under this section for an Indian tribe shall be in a form prescribed by the Secretary and contain the following information relating to the upcoming fiscal year for which the assistance under this chapter is to be made available:

(1) Goals and objectives

A statement of the goals and objectives to be accomplished during that period.

(2) Statement of needs

A statement of the housing needs of the low-income Indian families residing in the jurisdiction of the Indian tribe and the means by which such needs will be addressed during the period, including—

(A) a description of the estimated housing needs and the need for assistance for the low-income Indian families in the jurisdiction, including a description of the manner in which the geographical distribution of assistance is consistent with the geographical needs and needs for various categories of housing assistance; and

(B) a description of the estimated housing needs for all Indian families in the jurisdiction.

(3) Financial resources

An operating budget for the recipient, in a form prescribed by the Secretary, that includes—

(A) an identification and a description of the financial resources reasonably available to the recipient to carry out the purposes of this chapter, including an explanation of the manner in which amounts made available will leverage additional resources; and

(B) the uses to which such resources will be committed, including eligible and required affordable housing activities under subchapter II of this chapter and administrative expenses.

(4) Affordable housing resources

A statement of the affordable housing resources currently available and to be made available during the period, including—

(A) a description of the significant characteristics of the housing market in the jurisdiction, including the availability of housing from other public sources, private market housing, and the manner in which such characteristics influence the decision of the recipient to use grant amounts to be provided under this chapter for rental assistance, pro-

duction of new units, acquisition of existing units, or rehabilitation of units;

(B) a description of the structure, coordination, and means of cooperation between the recipient and any other governmental entities in the development, submission, or implementation of housing plans, including a description of the involvement of private, public, and nonprofit organizations and institutions, and the use of loan guarantees under section 1715z-13a of title 12, and other housing assistance provided by the Federal Government for Indian tribes, including loans, grants, and mortgage insurance;

(C) a description of the manner in which the plan will address the needs identified pursuant to paragraph (2);

(D) a description of the manner in which the recipient will protect and maintain the viability of housing owned and operated by the recipient that was developed under a contract between the Secretary and an Indian housing authority pursuant to the United States Housing Act of 1937 [42 U.S.C. 1437 et seq.];

(E) a description of any existing and anticipated homeownership programs and rental programs to be carried out during the period, and the requirements and assistance available under such programs;

(F) a description of any existing and anticipated housing rehabilitation programs necessary to ensure the long-term viability of the housing to be carried out during the period, and the requirements and assistance available under such programs;

(G) a description of all other existing or anticipated housing assistance provided by the recipient during the period, including transitional housing, homeless housing, college housing, supportive services housing, and the requirements and assistance available under such programs;

(H) a description of any housing to be demolished or disposed of, a timetable for such demolition or disposition, and any other information required by the Secretary with respect to such demolition or disposition;

(I) a description of the manner in which the recipient will coordinate with tribal and State welfare agencies to ensure that residents of such housing will be provided with access to resources to assist in obtaining employment and achieving self-sufficiency;

(J) a description of the requirements established by the recipient to promote the safety of residents of such housing, facilitate the undertaking of crime prevention measures, allow resident input and involvement, including the establishment of resident organizations, and allow for the coordination of crime prevention activities between the recipient and tribal and local law enforcement officials; and

(K) a description of the entity that will carry out the activities under the plan, including the organizational capacity and key personnel of the entity.

(5) Certification of compliance

Evidence of compliance which shall include, as appropriate—

(A) a certification that the recipient will comply with title II of the Civil Rights Act of 1968 [25 U.S.C. 1301 et seq.] in carrying out this chapter, to the extent that such title is applicable, and other applicable Federal statutes;

(B) a certification that the recipient will maintain adequate insurance coverage for housing units that are owned and operated or assisted with grant amounts provided under this chapter, in compliance with such requirements as may be established by the Secretary;

(C) a certification that policies are in effect and are available for review by the Secretary and the public governing the eligibility, admission, and occupancy of families for housing assisted with grant amounts provided under this chapter;

(D) a certification that policies are in effect and are available for review by the Secretary and the public governing rents charged, including the methods by which such rents or homebuyer payments are determined, for housing assisted with grant amounts provided under this chapter; and

(E) a certification that policies are in effect and are available for review by the Secretary and the public governing the management and maintenance of housing assisted with grant amounts provided under this chapter.

(6) Certain families

With respect to assistance provided under section 4131(b)(2) of this title by a recipient to Indian families that are not low-income families, evidence that there is a need for housing for each such family during that period that cannot reasonably be met without such assistance.

(d) Participation of tribally designated housing entity

A plan under this section for an Indian tribe may be prepared and submitted on behalf of the tribe by the tribally designated housing entity for the tribe, but only if such plan contains a certification by the recognized tribal government of the grant beneficiary that such tribe—

(1) has had an opportunity to review the plan and has authorized the submission of the plan by the housing entity; or

(2) has delegated to such tribally designated housing entity the authority to submit a plan on behalf of the tribe without prior review by the tribe.

(e) Coordination of plans

A plan under this section may cover more than 1 Indian tribe, but only if the certification requirements under subsection (d) of this section are complied with by each such grant beneficiary covered.

(f) Regulations

The requirements relating to the contents of plans under this section shall be established by regulation, pursuant to section 4116 of this title.

(Pub. L. 104-330, title I, §102, Oct. 26, 1996, 110 Stat. 4023; Pub. L. 105-276, title V, §595(e)(5), Oct. 21, 1998, 112 Stat. 2657; Pub. L. 106-568, title X,

§1003(b), (c), Dec. 27, 2000, 114 Stat. 2926; Pub. L. 106-569, title V, §503(b), (c), Dec. 27, 2000, 114 Stat. 2962.)

REFERENCES IN TEXT

The United States Housing Act of 1937, referred to in subsec. (c)(4)(D), is act Sept. 1, 1937, ch. 896, as revised generally by Pub. L. 93-383, title II, §201(a), Aug. 22, 1974, 88 Stat. 653, which is classified generally to chapter 8 (§1437 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 1437 of Title 42 and Tables.

The Civil Rights Act of 1968, referred to in subsec. (c)(5)(A), is Pub. L. 90-284, Apr. 11, 1968, 82 Stat. 73, as amended. Title II of the Act is classified generally to subchapter I (§1301 et seq.) of chapter 15 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3601 of Title 42 and Tables.

AMENDMENTS

2000—Subsec. (c)(6), Pub. L. 106-568, §1003(b), and Pub. L. 106-569, §503(b), amended subsec. (c) identically, adding par. (6).

Subsecs. (f), (g), Pub. L. 106-568, §1003(c), and Pub. L. 106-569, §503(c), amended section identically, redesignating subsec. (g) as (f) and striking out heading and text of former subsec. (f). Text read as follows:

“(1) SEPARATE REQUIREMENTS.—The Secretary may—

“(A) establish requirements for submission of plans under this section and the information to be included in such plans applicable to small Indian tribes and small tribally designated housing entities; and

“(B) waive any requirements under this section that the Secretary determines are burdensome or unnecessary for such tribes and housing entities.

“(2) SMALL TRIBES.—The Secretary may define small Indian tribes and small tribally designated housing entities based on the number of dwelling units assisted under this subchapter by the tribe or housing entity or owned or operated pursuant to a contract under the United States Housing Act of 1937 between the Secretary and the Indian housing authority for the tribe.”

1998—Subsec. (a), Pub. L. 105-276 redesignated par. (1) as (1)(A), par. (2) as (1)(B), and par. (3) as (2), and inserted “or” at end of par. (1)(A).

EFFECTIVE DATE

Section effective on the date provided by the Secretary of Housing and Urban Development pursuant to section 4116(a) of this title to provide for timely submission and review of Indian housing plans as necessary for the provision of assistance under this chapter in fiscal year 1998, see section 4113(e) of this title.

§ 4113. Review of plans

(a) Review and notice

(1) Review

The Secretary shall conduct a limited review of each Indian housing plan submitted to the Secretary to ensure that the plan complies with the requirements of section 4112 of this title. The Secretary shall have the discretion to review a plan only to the extent that the Secretary considers review is necessary.

(2) Notice

The Secretary shall notify each Indian tribe for which a plan is submitted and any tribally designated housing entity for the tribe whether the plan complies with such requirements not later than 60 days after receiving the plan. If the Secretary does not notify the Indian tribe, as required under this subsection and

subsection (b) of this section, the plan shall be considered, for purposes of this chapter, to have been determined to comply with the requirements under section 4112 of this title and the tribe shall be considered to have been notified of compliance upon the expiration of such 60-day period.

(b) Notice of reasons for determination of non-compliance

If the Secretary determines that a plan, as submitted, does not comply with the requirements under section 4112 of this title, the Secretary shall specify in the notice under subsection (a) of this section the reasons for the noncompliance and any modifications necessary for the plan to meet the requirements under section 4112 of this title.

(c) Review

After submission of the Indian housing plan or any amendment or modification to the plan to the Secretary, to the extent that the Secretary considers such action to be necessary to make determinations under this subsection, the Secretary shall review the plan (including any amendments or modifications thereto) to determine whether the contents of the plan—

- (1) set forth the information required by section 4112 of this title to be contained in an Indian housing plan;
- (2) are consistent with information and data available to the Secretary; and
- (3) are not prohibited by or inconsistent with any provision of this chapter or other applicable law.

If the Secretary determines that any of the appropriate certifications required under section 4112(c)(5) of this title are not included in the plan, the plan shall be deemed to be incomplete.

(d) Updates to plan

After a plan under section 4112 of this title has been submitted for an Indian tribe for any fiscal year, the tribe may comply with the provisions of such section for any succeeding fiscal year (with respect to information included for the 5-year period under section 4112(b) of this title or the 1-year period under section 4112(c) of this title) by submitting only such information regarding such changes as may be necessary to update the plan previously submitted. Not less than once every 5 years, the tribe shall submit a complete plan.

(e) Effective date

This section and section 4112 of this title shall take effect on the date provided by the Secretary pursuant to section 4116(a) of this title to provide for timely submission and review of Indian housing plans as necessary for the provision of assistance under this chapter in fiscal year 1998.

(Pub. L. 104-330, title I, § 103, Oct. 26, 1996, 110 Stat. 4026; Pub. L. 105-276, title V, § 595(e)(6), Oct. 21, 1998, 112 Stat. 2657.)

AMENDMENTS

1998—Subsec. (c)(3). Pub. L. 105-276 inserted “not” before “prohibited”.

§ 4114. Treatment of program income and labor standards

(a) Program income

(1) Authority to retain

Notwithstanding any other provision of this chapter, a recipient may retain any program income that is realized from any grant amounts under this chapter if—

- (A) such income was realized after the initial disbursement of the grant amounts received by the recipient; and
- (B) the recipient has agreed that it will utilize such income for housing related activities in accordance with this chapter.

(2) Prohibition of restricted access or reduction of grant

The Secretary may not reduce the grant amount for any Indian tribe based solely on—

- (A) whether the recipient for the tribe retains program income under paragraph (1);
- (B) the amount of any such program income retained;
- (C) whether the recipient retains reserve amounts described in section 4140 of this title; or
- (D) whether the recipient has expended retained program income for housing-related activities.

(3) Exclusion of amounts

The Secretary may, by regulation, exclude from consideration as program income any amounts determined to be so small that compliance with the requirements of this subsection would create an unreasonable administrative burden on the recipient.

(b) Labor standards

(1) In general

Any contract or agreement for assistance, sale, or lease pursuant to this chapter shall contain a provision requiring that not less than the wages prevailing in the locality, as determined or adopted (subsequent to a determination under applicable State, tribal, or local law) by the Secretary, shall be paid to all architects, technical engineers, draftsmen, and technicians employed in the development, and all maintenance laborers and mechanics employed in the operation, of the affordable housing project involved; and shall also contain a provision that not less than the wages prevailing in the locality, as predetermined by the Secretary of Labor pursuant to sections 3141-3144, 3146, and 3147 of title 40, shall be paid to all laborers and mechanics employed in the development of the affordable housing involved, and the Secretary shall require certification as to compliance with the provisions of this paragraph before making any payment under such contract or agreement.

(2) Exceptions

Paragraph (1) and the provisions relating to wages (pursuant to paragraph (1)) in any contract or agreement for assistance, sale, or lease pursuant to this chapter, shall not apply to any individual who receives no compensation or is paid expenses, reasonable benefits, or a nominal fee to perform the services for

which the individual volunteered and who is not otherwise employed at any time in the construction work.

(3) Application of tribal laws

Paragraph (1) shall not apply to any contract or agreement for assistance, sale, or lease pursuant to this chapter, if such contract or agreement is otherwise covered by one or more laws or regulations adopted by an Indian tribe that requires the payment of not less than prevailing wages, as determined by the Indian tribe.

(Pub. L. 104-330, title I, §104, Oct. 26, 1996, 110 Stat. 4027; Pub. L. 106-568, title X, §1003(j), Dec. 27, 2000, 114 Stat. 2930; Pub. L. 106-569, title V, §503(i), Dec. 27, 2000, 114 Stat. 2965; Pub. L. 107-292, §5, Nov. 13, 2002, 116 Stat. 2054.)

CODIFICATION

“Sections 3141-3144, 3146, and 3147 of title 40” substituted in subsec. (b)(1) for “the Act of March 3, 1931 (commonly known as the Davis-Bacon Act; chapter 411; 46 Stat. 1494; 40 U.S.C. 276a et seq.)” on authority of Pub. L. 107-217, §5(c), Aug. 21, 2002, 116 Stat. 1303, the first section of which enacted Title 40, Public Buildings, Property, and Works.

AMENDMENTS

2002—Subsec. (a)(1). Pub. L. 107-292, §5(1)(A), substituted “Notwithstanding any other provision of this chapter, a recipient” for “A recipient” in introductory provisions.

Subsec. (a)(1)(B). Pub. L. 107-292, §5(1)(B), added subpar. (B) and struck out former subpar. (B) which read as follows: “the recipient has agreed that it will utilize the program income for affordable housing activities in accordance with the provisions of this chapter.”

Subsec. (a)(2). Pub. L. 107-292, §5(2)(A), inserted “restricted access or” before “reduction” in heading.

Subsec. (a)(2)(D). Pub. L. 107-292, §5(2)(B)-(D), added subpar. (D).

2000—Subsec. (b)(1). Pub. L. 106-568, §1003(j)(1), and Pub. L. 106-569, §503(i)(1), amended par. (1) identically, substituting “Act of March 3, 1931 (commonly known as the Davis-Bacon Act; chapter 411; 46 Stat. 1494; 40 U.S.C. 276a et seq.)” for “Davis-Bacon Act (40 U.S.C. 276a-276a-5)”.

Subsec. (b)(3). Pub. L. 106-568, §1003(j)(2), and Pub. L. 106-569, §503(i)(2), amended subsec. (b) identically, adding par. (3).

EFFECTIVE DATE

Section effective Oct. 1, 1997, except as otherwise expressly provided, see section 107 of Pub. L. 104-330, set out as a note under section 4101 of this title.

§ 4115. Environmental review

(a) In general

(1) Release of funds

In order to ensure that the policies of the National Environmental Policy Act of 1969 [42 U.S.C. 4321 et seq.] and other provisions of law that further the purposes of such Act (as specified in regulations issued by the Secretary) are most effectively implemented in connection with the expenditure of grant amounts provided under this chapter, and to ensure to the public undiminished protection of the environment, the Secretary, in lieu of the environmental protection procedures otherwise applicable, may by regulation provide for the release of amounts for particular projects to

tribes which assume all of the responsibilities for environmental review, decisionmaking, and action pursuant to such Act, and such other provisions of law as the regulations of the Secretary specify, that would apply to the Secretary were the Secretary to undertake such projects as Federal projects.

(2) Regulations

(A) In general

The Secretary shall issue regulations to carry out this section only after consultation with the Council on Environmental Quality.

(B) Contents

The regulations issued under this paragraph shall—

- (i) provide for the monitoring of the environmental reviews performed under this section;
- (ii) in the discretion of the Secretary, facilitate training for the performance of such reviews; and
- (iii) provide for the suspension or termination of the assumption of responsibilities under this section.

(3) Effect on assumed responsibility

The duty of the Secretary under paragraph (2)(B) shall not be construed to limit or reduce any responsibility assumed by a recipient of grant amounts with respect to any particular release of funds.

(b) Procedure

The Secretary shall approve the release of funds subject to the procedures authorized by this section only if, not less than 15 days prior to such approval and prior to any commitment of funds to such projects, the tribe has submitted to the Secretary a request for such release accompanied by a certification that meets the requirements of subsection (c) of this section. The approval of the Secretary of any such certification shall be deemed to satisfy the responsibilities of the Secretary under the National Environmental Policy Act of 1969 [42 U.S.C. 4321 et seq.] and such other provisions of law as the regulations of the Secretary specify insofar as those responsibilities relate to the releases of funds for projects to be carried out pursuant thereto that are covered by such certification.

(c) Certification

A certification under the procedures authorized by this section shall—

- (1) be in a form acceptable to the Secretary;
- (2) be executed by the chief executive officer or other officer of the tribe under this chapter qualified under regulations of the Secretary;
- (3) specify that the tribe has fully carried out its responsibilities as described under subsection (a) of this section; and
- (4) specify that the certifying officer—

(A) consents to assume the status of a responsible Federal official under the National Environmental Policy Act of 1969 [42 U.S.C. 4321 et seq.] and each provision of law specified in regulations issued by the Secretary insofar as the provisions of such Act or such other provisions of law apply pursuant to subsection (a) of this section; and

(B) is authorized and consents on behalf of the tribe and such officer to accept the jurisdiction of the Federal courts for the purpose of enforcement of the responsibilities of the certifying officer as such an official.

(d) Environmental compliance

The Secretary may waive the requirements under this section if the Secretary determines that a failure on the part of a recipient to comply with provisions of this section—

(1) will not frustrate the goals of the National Environmental Policy Act of 1969 [42 U.S.C. 4321 et seq.] or any other provision of law that furthers the goals of that Act;

(2) does not threaten the health or safety of the community involved by posing an immediate or long-term hazard to residents of that community;

(3) is a result of inadvertent error, including an incorrect or incomplete certification provided under subsection (c)(1) of this section; and

(4) may be corrected through the sole action of the recipient.

(Pub. L. 104-330, title I, §105, Oct. 26, 1996, 110 Stat. 4028; Pub. L. 106-568, title X, §1003(d), Dec. 27, 2000, 114 Stat. 2926; Pub. L. 106-569, title V, §503(d), Dec. 27, 2000, 114 Stat. 2962.)

REFERENCES IN TEXT

The National Environmental Policy Act of 1969, referred to in text, is Pub. L. 91-190, Jan. 1, 1970, 83 Stat. 852, as amended, which is classified generally to chapter 55 (§4321 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of Title 42 and Tables.

AMENDMENTS

2000—Subsec. (d). Pub. L. 106-568 and Pub. L. 106-569 amended section identically, adding subsec. (d).

EFFECTIVE DATE

Section effective Oct. 1, 1997, except as otherwise expressly provided, see section 107 of Pub. L. 104-330, set out as a note under section 4101 of this title.

§ 4116. Regulations

(a) Transition requirements

(1) In general

Not later than 90 days after October 26, 1996, the Secretary shall, by notice issued in the Federal Register, establish any requirements necessary to provide for the transition (upon the effectiveness of this chapter and the amendments made by this chapter) from the provision of assistance for Indian tribes and Indian housing authorities under the United States Housing Act of 1937 [42 U.S.C. 1437 et seq.] and other related provisions of law to the provision of assistance in accordance with this chapter and the amendments made by this chapter.

(2) Public comments; general notice of proposed rulemaking

The notice issued under paragraph (1) shall—

(A) invite public comments regarding such transition requirements and final regulations to carry out this chapter; and

(B) include a general notice of proposed rulemaking (for purposes of section 564(a) of

title 5) of the final regulations under subsection (b) of this section.

(b) Final regulations

(1) Timing

The Secretary shall issue final regulations necessary to carry out this chapter not later than September 1, 1997, and such regulations shall take effect not later than the effective date of this chapter.

(2) Negotiated rulemaking procedure

(A) In general

Notwithstanding sections 563(a) and 565(a) of title 5, all regulations required under this chapter, including any regulations that may be required pursuant to amendments made to this chapter after October 26, 1996, shall be issued according to a negotiated rulemaking procedure under subchapter III of chapter 5 of title 5.

(B) Committee

(i) In general

The Secretary shall establish a negotiated rulemaking committee, in accordance with the procedures under that subchapter, for the development of proposed regulations under subparagraph (A).

(ii) Adaptation

In establishing the negotiated rulemaking committee, the Secretary shall—

(I) adapt the procedures under the subchapter described in clause (i) to the unique government-to-government relationship between the Indian tribes and the United States, and shall ensure that the membership of the committee include only representatives of the Federal Government and of geographically diverse small, medium, and large Indian tribes; and

(II) shall not preclude the participation of tribally designated housing entities should tribes elect to be represented by such entities.

(c) Effective date

This section shall take effect on October 26, 1996.

(Pub. L. 104-330, title I, §106, Oct. 26, 1996, 110 Stat. 4029; Pub. L. 107-292, §6, Nov. 13, 2002, 116 Stat. 2054.)

REFERENCES IN TEXT

For the effective date of this chapter, referred to in subsecs. (a)(1) and (b)(1), as Oct. 1, 1997, except as otherwise expressly provided, see section 107 of Pub. L. 104-330, set out as an Effective Date note under section 4101 of this title.

The United States Housing Act of 1937, referred to in subsec. (a)(1), is act Sept. 1, 1937, ch. 896, as revised generally by Pub. L. 93-383, title II, §201(a), Aug. 22, 1974, 88 Stat. 653, which is classified generally to chapter 8 (§1437 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 1437 of Title 42 and Tables.

AMENDMENTS

2002—Subsec. (b)(2)(A). Pub. L. 107-292 inserted “, including any regulations that may be required pur-

suant to amendments made to this chapter after October 26, 1996,” after “required under this chapter”.

§ 4117. Authorization of appropriations

There are authorized to be appropriated for grants under this subchapter such sums as may be necessary for each of fiscal years 1998 through 2007. This section shall take effect on October 26, 1996.

(Pub. L. 104-330, title I, § 108, Oct. 26, 1996, 110 Stat. 4030; Pub. L. 107-292, § 2(a), Nov. 13, 2002, 116 Stat. 2053.)

AMENDMENTS

2002—Pub. L. 107-292 substituted “1998 through 2007” for “1998, 1999, 2000, and 2001”.

SUBCHAPTER II—AFFORDABLE HOUSING ACTIVITIES

§ 4131. National objectives and eligible families

(a) Primary objective

The national objectives of this chapter are—

(1) to assist and promote affordable housing activities to develop, maintain, and operate affordable housing in safe and healthy environments on Indian reservations and in other Indian areas for occupancy by low-income Indian families;

(2) to ensure better access to private mortgage markets for Indian tribes and their members and to promote self-sufficiency of Indian tribes and their members;

(3) to coordinate activities to provide housing for Indian tribes and their members with Federal, State, and local activities to further economic and community development for Indian tribes and their members;

(4) to plan for and integrate infrastructure resources for Indian tribes with housing development for tribes; and

(5) to promote the development of private capital markets in Indian country and to allow such markets to operate and grow, thereby benefiting Indian communities.

(b) Eligible families

(1) In general

Except as provided under paragraphs (2) and (4), assistance under eligible housing activities under this chapter shall be limited to low-income Indian families on Indian reservations and other Indian areas.

(2) Exception to low-income requirement

A recipient may provide assistance for homeownership activities under section 4132(2) of this title, model activities under section 4132(6) of this title, or loan guarantee activities under subchapter VI of this chapter to Indian families who are not low-income families, to the extent that the Secretary approves the activities pursuant to such section or subchapter because there is a need for housing for such families that cannot reasonably be met without such assistance. The Secretary shall establish limits on the amount of assistance that may be provided under this chapter for activities for families who are not low-income families.

(3) Non-Indian families

Notwithstanding paragraph (1), a recipient may provide housing or housing assistance

provided through affordable housing activities assisted with grant amounts under this chapter for a non-Indian family on an Indian reservation or other Indian area if the recipient determines that the presence of the family on the Indian reservation or other Indian area is essential to the well-being of Indian families and the need for housing for the family cannot reasonably be met without such assistance.

(4) Law enforcement officers

A recipient may provide housing or housing assistance provided through affordable housing activities assisted with grant amounts under this chapter for a law enforcement officer on an Indian reservation or other Indian area, if—

(A) the officer—

(i) is employed on a full-time basis by the Federal Government or a State, county, or lawfully recognized tribal government; and

(ii) in implementing such full-time employment, is sworn to uphold, and make arrests for, violations of Federal, State, county, or tribal law; and

(B) the recipient determines that the presence of the law enforcement officer on the Indian reservation or other Indian area may deter crime.

(5) Law enforcement officers

Notwithstanding paragraph (1), a recipient may provide housing or housing assistance provided through affordable housing activities assisted with grant amounts under this chapter to a law enforcement officer on the reservation or other Indian area, who is employed full-time by a Federal, State, county or tribal government, and in implementing such full-time employment is sworn to uphold, and make arrests for violations of Federal, State, county or tribal law, if the recipient determines that the presence of the law enforcement officer on the Indian reservation or other Indian area may deter crime.

(6)¹ Preference for tribal members and other Indian families

The Indian housing plan for an Indian tribe may require preference, for housing or housing assistance provided through affordable housing activities assisted with grant amounts provided under this chapter on behalf of such tribe, to be given (to the extent practicable) to Indian families who are members of such tribe, or to other Indian families. In any case in which the applicable Indian housing plan for an Indian tribe provides for preference under this paragraph, the recipient for the tribe shall ensure that housing activities that are assisted with grant amounts under this chapter for such tribe are subject to such preference.

(6)¹ Exemption

Title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.] and title VIII of the Civil Rights Act of 1968 [42 U.S.C. 3601 et seq.] shall not apply to actions by federally recognized

¹ So in original. Two pars. (6) have been enacted.

tribes and the tribally designated housing entities of those tribes under this chapter.

(Pub. L. 104-330, title II, §201, Oct. 26, 1996, 110 Stat. 4031; Pub. L. 105-276, title V, §595(e)(7), Oct. 21, 1998, 112 Stat. 2657; Pub. L. 106-377, §1(a)(1) [title II, §210], Oct. 27, 2000, 114 Stat. 1441, 1441A-26; Pub. L. 106-568, title X, §1003(e), Dec. 27, 2000, 114 Stat. 2926.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original “this Act”, meaning Pub. L. 104-330, Oct. 26, 1996, 110 Stat. 4031, as amended, known as the Native American Housing Assistance and Self-Determination Act of 1996. For complete classification of this Act to the Code, see Short Title note set out under section 4101 of this title and Tables.

The Civil Rights Act of 1964, referred to in subsec. (b)(6), is Pub. L. 88-352, July 2, 1964, 78 Stat. 241, as amended. Title VI of the Act is classified generally to subchapter V (§2000d et seq.) of chapter 21 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 2000a of Title 42 and Tables.

The Civil Rights Act of 1968, referred to in subsec. (b)(6), is Pub. L. 90-284, Apr. 11, 1968, 82 Stat. 73, as amended. Title VIII of the Act, known as the Fair Housing Act, is classified principally to subchapter I (§3601 et seq.) of chapter 45 of Title 42. For complete classification of this Act to the Code, see Short Title note set out under section 3601 of Title 42 and Tables.

AMENDMENTS

2000—Subsec. (b)(1). Pub. L. 106-568, §1003(e)(1), substituted “paragraphs (2) and (4)” for “paragraph (2)”.

Subsec. (b)(4). Pub. L. 106-568, §1003(e)(3), added par. (4). Former par. (4) redesignated (5).

Pub. L. 106-377, §1(a)(1) [title II, §210(2)], added par. (4). Former par. (4) redesignated (5).

Subsec. (b)(5). Pub. L. 106-568, §1003(e)(2), redesignated par. (4) as (5). Former par. (5) redesignated (6).

Pub. L. 106-377, §1(a)(1) [title II, §210(1)], redesignated par. (4) as (5). Former par. (5) redesignated (6).

Subsec. (b)(6). Pub. L. 106-568, §1003(e)(2), redesignated par. (5), relating to preference for tribal members and other Indian families, as (6).

Pub. L. 106-377, §1(a)(1) [title II, §210(1)], redesignated par. (5), relating to exemption, as (6).

1998—Subsec. (b)(5). Pub. L. 105-276 substituted “federally recognized tribes and the tribally designated housing entities of those tribes” for “Indian tribes” and “chapter” for “subsection”.

EFFECTIVE DATE

Section effective Oct. 1, 1997, except as otherwise expressly provided, see section 107 of Pub. L. 104-330, set out as a note under section 4101 of this title.

§ 4132. Eligible affordable housing activities

Affordable housing activities under this subchapter are activities, in accordance with the requirements of this subchapter, to develop or to support affordable housing for rental or homeownership, or to provide housing services with respect to affordable housing, through the following activities:

(1) Indian housing assistance

The provision of modernization or operating assistance for housing previously developed or operated pursuant to a contract between the Secretary and an Indian housing authority.

(2) Development

The acquisition, new construction, reconstruction, or moderate or substantial rehabili-

tation of affordable housing, which may include real property acquisition, site improvement, development of utilities and utility services, conversion, demolition, financing, administration and planning, and other related activities.

(3) Housing services

The provision of housing-related services for affordable housing, such as housing counseling in connection with rental or homeownership assistance, establishment and support of resident organizations and resident management corporations, energy auditing, activities related to the provision of self-sufficiency and other services, and other services related to assisting owners, tenants, contractors, and other entities, participating or seeking to participate in other housing activities assisted pursuant to this section.

(4) Housing management services

The provision of management services for affordable housing, including preparation of work specifications, loan processing, inspections, tenant selection, management of tenant-based rental assistance, and management of affordable housing projects.

(5) Crime prevention and safety activities

The provision of safety, security, and law enforcement measures and activities appropriate to protect residents of affordable housing from crime.

(6) Model activities

Housing activities under model programs that are designed to carry out the purposes of this chapter and are specifically approved by the Secretary as appropriate for such purpose.

(7) Community development demonstration project

(A) In general

Consistent with principles of Indian self-determination and the findings of this chapter, the Secretary shall conduct and submit to Congress a study of the feasibility of establishing a demonstration project in which Indian tribes, tribal organizations, or tribal consortia are authorized to expend amounts received pursuant to the Native American Housing Assistance and Self-Determination Reauthorization Act of 2002 in order to design, implement, and operate community development demonstration projects.

(B) Study

Not later than 1 year after November 13, 2002, the Secretary shall submit the study conducted under subparagraph (A) to the Committee on Banking, Housing, and Urban Affairs and the Committee on Indian Affairs of the Senate, and the Committee on Financial Services and the Committee on Resources of the House of Representatives.

(8) Self-Determination Act demonstration project

(A) In general

Consistent with the provisions of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.), the Sec-

retary shall conduct and submit to Congress a study of the feasibility of establishing a demonstration project in which Indian tribes and tribal organizations are authorized to receive assistance in a manner that maximizes tribal authority and decision-making in the design and implementation of Federal housing and related activity funding.

(B) Study

Not later than 1 year after November 13, 2002, the Secretary shall submit the study conducted under subparagraph (A) to the Committee on Banking, Housing, and Urban Affairs and the Committee on Indian Affairs of the Senate, and the Committee on Financial Services and the Committee on Resources of the House of Representatives.

(Pub. L. 104-330, title II, §202, Oct. 26, 1996, 110 Stat. 4032; Pub. L. 107-292, §8, Nov. 13, 2002, 116 Stat. 2055.)

REFERENCES IN TEXT

The Native American Housing Assistance and Self-Determination Reauthorization Act of 2002, referred to in par. (7)(A), is Pub. L. 107-292, Nov. 13, 2002, 116 Stat. 2053. For complete classification of this Act to the Code, see Short Title of 2002 Amendment note set out under section 4101 of this title and Tables.

The Indian Self-Determination and Education Assistance Act, referred to in par. (8)(A), is Pub. L. 93-638, Jan. 4, 1975, 88 Stat. 2203, as amended, which is classified principally to subchapter II (§450 et seq.) of chapter 14 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 450 of this title and Tables.

AMENDMENTS

2002—Pars. (7), (8). Pub. L. 107-292 added pars. (7) and (8).

EFFECTIVE DATE

Section effective Oct. 1, 1997, except as otherwise expressly provided, see section 107 of Pub. L. 104-330, set out as a note under section 4101 of this title.

§ 4133. Program requirements

(a) Rents

(1) Establishment

Subject to paragraph (2), each recipient shall develop written policies governing rents and homebuyer payments charged for dwelling units assisted under this chapter, including the methods by which such rents and homebuyer payments are determined.

(2) Maximum rent

In the case of any low-income family residing in a dwelling unit assisted with grant amounts under this chapter, the monthly rent or homebuyer payment (as applicable) for such dwelling unit may not exceed 30 percent of the monthly adjusted income of such family.

(b) Maintenance and efficient operation

Each recipient who owns or operates (or is responsible for funding any entity that owns or operates) housing developed or operated pursuant to a contract between the Secretary and an Indian housing authority pursuant to the United States Housing Act of 1937 [42 U.S.C. 1437 et seq.] shall, using amounts of any grants received under this chapter, reserve and use for operating

assistance under section 4132(1) of this title such amounts as may be necessary to provide for the continued maintenance and efficient operation of such housing. This subsection may not be construed to prevent any recipient (or entity funded by a recipient) from demolishing or disposing of Indian housing referred to in this subsection, pursuant to regulations established by the Secretary.

(c) Insurance coverage

Each recipient shall maintain adequate insurance coverage for housing units that are owned or operated or assisted with grant amounts provided under this chapter.

(d) Eligibility for admission

Each recipient shall develop written policies governing the eligibility, admission, and occupancy of families for housing assisted with grant amounts provided under this chapter.

(e) Management and maintenance

Each recipient shall develop policies governing the management and maintenance of housing assisted with grant amounts under this chapter.

(Pub. L. 104-330, title II, §203, Oct. 26, 1996, 110 Stat. 4032.)

REFERENCES IN TEXT

The United States Housing Act of 1937, referred to in subsec. (b), is act Sept. 1, 1937, ch. 896, as revised generally by Pub. L. 93-383, title II, §201(a), Aug. 22, 1974, 88 Stat. 653, which is classified generally to chapter 8 (§1437 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 1437 of Title 42 and Tables.

EFFECTIVE DATE

Section effective Oct. 1, 1997, except as otherwise expressly provided, see section 107 of Pub. L. 104-330, set out as a note under section 4101 of this title.

§ 4134. Types of investments

(a) In general

Subject to section 4133 of this title and the Indian housing plan for an Indian tribe, the recipient for that tribe shall have—

(1) the discretion to use grant amounts for affordable housing activities through equity investments, interest-bearing loans or advances, noninterest-bearing loans or advances, interest subsidies, leveraging of private investments, or any other form of assistance that the Secretary has determined to be consistent with the purposes of this chapter; and

(2) the right to establish the terms of assistance.

(b) Investments

A recipient may invest grant amounts for the purposes of carrying out affordable housing activities in investment securities and other obligations as approved by the Secretary.

(Pub. L. 104-330, title II, §204, Oct. 26, 1996, 110 Stat. 4033.)

EFFECTIVE DATE

Section effective Oct. 1, 1997, except as otherwise expressly provided, see section 107 of Pub. L. 104-330, set out as a note under section 4101 of this title.

§ 4135. Low-income requirement and income targeting

(a) In general

Housing shall qualify as affordable housing for purposes of this chapter only if—

(1) each dwelling unit in the housing—

(A) in the case of rental housing, is made available for occupancy only by a family that is a low-income family at the time of their initial occupancy of such unit;

(B) in the case of a contract to purchase existing housing, is made available for purchase only by a family that is a low-income family at the time of purchase;

(C) in the case of a lease-purchase agreement for existing housing or for housing to be constructed, is made available for lease-purchase only by a family that is a low-income family at the time the agreement is entered into; and

(D) in the case of a contract to purchase housing to be constructed, is made available for purchase only by a family that is a low-income family at the time the contract is entered into; and

(2) except for housing assisted under section 1437bb of title 42 (as in effect before the date of the effectiveness of this chapter), each dwelling unit in the housing will remain affordable, according to binding commitments satisfactory to the Secretary, for the remaining useful life of the property (as determined by the Secretary) without regard to the term of the mortgage or to transfer of ownership, or for such other period that the Secretary determines is the longest feasible period of time consistent with sound economics and the purposes of this chapter, except upon a foreclosure by a lender (or upon other transfer in lieu of foreclosure) if such action—

(A) recognizes any contractual or legal rights of public agencies, nonprofit sponsors, or others to take actions that would avoid termination of low-income affordability in the case of foreclosure or transfer in lieu of foreclosure; and

(B) is not for the purpose of avoiding low-income affordability restrictions, as determined by the Secretary.

(b) Exception

Notwithstanding subsection (a) of this section, housing assisted pursuant to section 4131(b)(2) of this title shall be considered affordable housing for purposes of this chapter.

(Pub. L. 104-330, title II, §205, Oct. 26, 1996, 110 Stat. 4033; Pub. L. 105-276, title V, §595(e)(8), Oct. 21, 1998, 112 Stat. 2657.)

REFERENCES IN TEXT

Section 1437bb of title 42, referred to in subsec. (a)(2), was repealed by Pub. L. 104-330, title V, §501(a), Oct. 26, 1996, 110 Stat. 4041, effective Oct. 1, 1997.

For the date of the effectiveness of this chapter, referred to in subsec. (a)(2), as Oct. 1, 1997, except as otherwise expressly provided, see section 107 of Pub. L. 104-330, set out as an Effective Date note under section 4101 of this title.

AMENDMENTS

1998—Subsec. (a)(1)(B) to (D). Pub. L. 105-276 added subpars. (B) to (D) and struck out former subpar. (B)

which read as follows: “in the case of housing for homeownership, is made available for purchase only by a family that is a low-income family at the time of purchase; and”.

EFFECTIVE DATE

Section effective Oct. 1, 1997, except as otherwise expressly provided, see section 107 of Pub. L. 104-330, set out as a note under section 4101 of this title.

§ 4136. Repealed. Pub. L. 106-568, title X, § 1003(k)(2), Dec. 27, 2000, 114 Stat. 2930; Pub. L. 106-569, title V, § 503(j)(2), Dec. 27, 2000, 114 Stat. 2966

Section, Pub. L. 104-330, title II, §206, Oct. 26, 1996, 110 Stat. 4034; Pub. L. 105-276, title V, §595(a), Oct. 21, 1998, 112 Stat. 2656, related to certification of compliance with subsidy layering requirements.

§ 4137. Lease requirements and tenant selection

(a) Leases

Except to the extent otherwise provided by or inconsistent with tribal law, in renting dwelling units in affordable housing assisted with grant amounts provided under this chapter, the owner or manager of the housing shall utilize leases that—

(1) do not contain unreasonable terms and conditions;

(2) require the owner or manager to maintain the housing in compliance with applicable housing codes and quality standards;

(3) require the owner or manager to give adequate written notice of termination of the lease, which shall be the period of time required under State, tribal, or local law;

(4) specify that, with respect to any notice of eviction or termination, notwithstanding any State, tribal, or local law, a resident shall be informed of the opportunity, prior to any hearing or trial, to examine any relevant documents, records, or regulations directly related to the eviction or termination;

(5) require that the owner or manager may not terminate the tenancy, during the term of the lease, except for serious or repeated violation of the terms or conditions of the lease, violation of applicable Federal, State, tribal, or local law, or for other good cause; and

(6) provide that the owner or manager may terminate the tenancy of a resident for any activity, engaged in by the resident, any member of the household of the resident, or any guest or other person under the control of the resident, that—

(A) threatens the health or safety of, or right to peaceful enjoyment of the premises by, other residents or employees of the owner or manager of the housing;

(B) threatens the health or safety of, or right to peaceful enjoyment of their premises by, persons residing in the immediate vicinity of the premises; or

(C) is criminal activity (including drug-related criminal activity) on or off the premises.

(b) Tenant and homebuyer selection

The owner or manager of affordable rental housing assisted with grant amounts provided under this chapter shall adopt and utilize writ-

ten tenant and homebuyer selection policies and criteria that—

(1) are consistent with the purpose of providing housing for low-income families;

(2) are reasonably related to program eligibility and the ability of the applicant to perform the obligations of the lease; and

(3) provide for—

(A) the selection of tenants and homebuyers from a written waiting list in accordance with the policies and goals set forth in the Indian housing plan for the tribe that is the grant beneficiary of such grant amounts; and

(B) the prompt notification in writing to any rejected applicant of that rejection and the grounds for that rejection.

(Pub. L. 104-330, title II, §207, Oct. 26, 1996, 110 Stat. 4034; Pub. L. 105-276, title V, §595(b), (e)(9), Oct. 21, 1998, 112 Stat. 2656, 2658.)

AMENDMENTS

1998—Subsec. (b). Pub. L. 105-276, §595(b)(1), (2), in heading substituted “Tenant and homebuyer selection” for “Tenant selection” and, in introductory provisions, inserted “and homebuyer” after “tenant”.

Subsec. (b)(3)(A). Pub. L. 105-276, §595(b)(3), inserted “and homebuyers” after “tenants”.

Subsec. (b)(3)(B). Pub. L. 105-276, §595(e)(9), substituted “to any rejected applicant of that rejection and the grounds for that rejection” for “of any rejected applicant of the grounds for any rejection”.

EFFECTIVE DATE

Section effective Oct. 1, 1997, except as otherwise expressly provided, see section 107 of Pub. L. 104-330, set out as a note under section 4101 of this title.

§ 4138. Availability of records

(a) Provision of information

Notwithstanding any other provision of law, except as provided in subsection (b) of this section, the National Crime Information Center, police departments, and other law enforcement agencies shall, upon request, provide information to Indian tribes or tribally designated housing entities regarding the criminal conviction records of adult applicants for, or tenants of, housing assisted with grant amounts provided to such tribe or entity under this chapter for purposes of applicant screening, lease enforcement, and eviction.

(b) Exception

A law enforcement agency described in subsection (a) of this section shall provide information under this paragraph relating to any criminal conviction of a juvenile only to the extent that the release of such information is authorized under the law of the applicable State, tribe, or locality.

(c) Confidentiality

An Indian tribe or tribally designated housing entity receiving information under this section may use such information only for the purposes provided in this section and such information may not be disclosed to any person who is not an officer, employee, or authorized representative of the tribe or entity or the owner of housing assisted under this chapter, and who has a job-related need to have access to the informa-

tion for the purposes under this section. For judicial eviction proceedings, disclosures may be made to the extent necessary. The Secretary shall, by regulation, establish procedures necessary to ensure that information provided under this section to any tribe or entity is used, and confidentiality is maintained, as required under this section.

(Pub. L. 104-330, title II, §208, Oct. 26, 1996, 110 Stat. 4035; Pub. L. 105-276, title V, §595(e)(10), Oct. 21, 1998, 112 Stat. 2658.)

AMENDMENTS

1998—Subsec. (a). Pub. L. 105-276, §595(e)(10)(A), substituted “subsection (b) of this section” for “paragraph (2)”.

Subsec. (b). Pub. L. 105-276, §595(e)(10)(B), substituted “subsection (a) of this section” for “paragraph (1)”.

EFFECTIVE DATE

Section effective Oct. 1, 1997, except as otherwise expressly provided, see section 107 of Pub. L. 104-330, set out as a note under section 4101 of this title.

§ 4139. Noncompliance with affordable housing requirement

If a recipient uses grant amounts to provide affordable housing under this subchapter, and at any time during the useful life of the housing the recipient does not comply with the requirement under section 4135(a)(2) of this title, the Secretary shall take appropriate action under section 4161(a) of this title.

(Pub. L. 104-330, title II, §209, Oct. 26, 1996, 110 Stat. 4035; Pub. L. 105-276, title V, §595(c), Oct. 21, 1998, 112 Stat. 2656; Pub. L. 106-568, title X, §1003(f)(1), Dec. 27, 2000, 114 Stat. 2927; Pub. L. 106-569, title V, §503(e)(1), Dec. 27, 2000, 114 Stat. 2962.)

AMENDMENTS

2000—Pub. L. 106-568 and Pub. L. 106-569 generally amended section catchline and text identically. Prior to amendment, text read as follows: “If a recipient uses grant amounts to provide affordable housing under activities under this subchapter and, at any time during the useful life of the housing the housing does not comply with the requirement under section 4135(a)(2) of this title, the Secretary shall reduce future grant payments on behalf of the grant beneficiary by an amount equal to the grant amounts used for such housing (under the authority under section 4161(a)(2) of this title) or require repayment to the Secretary of an amount equal to such grant amounts.”

1998—Pub. L. 105-276 made technical amendment to reference in original act which appears in text as reference to section 4135(a)(2) of this title.

EFFECTIVE DATE

Section effective Oct. 1, 1997, except as otherwise expressly provided, see section 107 of Pub. L. 104-330, set out as a note under section 4101 of this title.

§ 4140. Continued use of amounts for affordable housing

Any funds for programs for low-income housing under the United States Housing Act of 1937 [42 U.S.C. 1437 et seq.] that, on the date of the applicability of this chapter to an Indian tribe, are owned by, or in the possession or under the control of, the Indian housing authority for the tribe, including all reserves not otherwise obli-

gated, shall be considered assistance under this chapter and subject to the provisions of this chapter relating to use of such assistance.

(Pub. L. 104-330, title II, §210, Oct. 26, 1996, 110 Stat. 4036.)

REFERENCES IN TEXT

The United States Housing Act of 1937, referred to in text, is act Sept. 1, 1937, ch. 896, as revised generally by Pub. L. 93-383, title II, §201(a), Aug. 22, 1974, 88 Stat. 653, which is classified generally to chapter 8 (§1437 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 1437 of Title 42 and Tables.

The date of the applicability of this chapter, referred to in text, probably means the effective date of Pub. L. 104-330, which is Oct. 1, 1997, except as otherwise expressly provided. See section 107 of Pub. L. 104-330, set out as an Effective Date note under section 4101 of this title.

EFFECTIVE DATE

Section effective Oct. 1, 1997, except as otherwise expressly provided, see section 107 of Pub. L. 104-330, set out as a note under section 4101 of this title.

SUBCHAPTER III—ALLOCATION OF GRANT AMOUNTS

§ 4151. Annual allocation

For each fiscal year, the Secretary shall allocate any amounts made available for assistance under this chapter for the fiscal year, in accordance with the formula established pursuant to section 4152 of this title, among Indian tribes that comply with the requirements under this chapter for a grant under this chapter.

(Pub. L. 104-330, title III, §301, Oct. 26, 1996, 110 Stat. 4036.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original “this Act”, meaning Pub. L. 104-330, Oct. 26, 1996, 110 Stat. 4016, as amended, known as the Native American Housing Assistance and Self-Determination Act of 1996. For complete classification of this Act to the Code, see Short Title note set out under section 4101 of this title and Tables.

EFFECTIVE DATE

Section effective Oct. 1, 1997, except as otherwise expressly provided, see section 107 of Pub. L. 104-330, set out as a note under section 4101 of this title.

§ 4152. Allocation formula

(a) Establishment

The Secretary shall, by regulations issued not later than the expiration of the 12-month period beginning on October 26, 1996, in the manner provided under section 4116 of this title, establish a formula to provide for allocating amounts available for a fiscal year for block grants under this chapter among Indian tribes in accordance with the requirements of this section.

(b) Factors for determination of need

The formula shall be based on factors that reflect the need of the Indian tribes and the Indian areas of the tribes for assistance for affordable housing activities, including the following factors:

- (1) The number of low-income housing dwelling units owned or operated at the time pursu-

ant to a contract between an Indian housing authority for the tribe and the Secretary.

(2) The extent of poverty and economic distress and the number of Indian families within Indian areas of the tribe.

(3) Other objectively measurable conditions as the Secretary and the Indian tribes may specify.

(c) Other factors for consideration

In establishing the formula, the Secretary shall consider—

(1) the relative administrative capacities and other challenges faced by the recipient, including, but not limited to geographic distribution within the Indian area and technical capacity; and

(2) the extent to which terminations of assistance under subchapter V of this chapter will affect funding available to State recognized tribes.

(d) Funding for public housing operation and modernization

(1) Full funding

(A) In general

Except with respect to an Indian tribe described in subparagraph (B), the formula shall provide that, if, in any fiscal year, the total amount made available for assistance under this chapter is equal to or greater than the total amount made available for fiscal year 1996 for assistance for the operation and modernization of public housing developed or operated pursuant to a contract between the Secretary and an Indian housing authority pursuant to the United States Housing Act of 1937 [42 U.S.C. 1437 et seq.], the amount provided for such fiscal year for each Indian tribe for which such operating or modernization assistance was provided for fiscal year 1996 shall not be less than the total amount of such operating and modernization assistance provided for fiscal year 1996 for such tribe.

(B) Certain Indian tribes

With respect to fiscal year 2001 and each fiscal year thereafter, for any Indian tribe with an Indian housing authority that owns or operates fewer than 250 public housing units, the formula shall provide that if the amount provided for a fiscal year in which the total amount made available for assistance under this chapter is equal to or greater than the amount made available for fiscal year 1996 for assistance for the operation and modernization of the public housing referred to in subparagraph (A), then the amount provided to that Indian tribe as modernization assistance shall be equal to the average annual amount of funds provided to the Indian tribe (other than funds provided as emergency assistance) under the assistance program under section 14 of the United States Housing Act of 1937 (42 U.S.C. 1437l) for the period beginning with fiscal year 1992 and ending with fiscal year 1997.

(2) Partial funding

The formula shall provide that, if, in any fiscal year, the total amount made available for

assistance under this chapter is less than the total amount made available for fiscal year 1996 for assistance for the operation and modernization of public housing developed or operated pursuant to a contract between the Secretary and an Indian housing authority pursuant to the United States Housing Act of 1937 [42 U.S.C. 1437 et seq.], the amount provided for such fiscal year for each Indian tribe for which such operating or modernization assistance was provided for fiscal year 1996 shall not be less than the amount that bears the same ratio to the total amount available for assistance under this chapter for such fiscal year that the amount of operating and modernization assistance provided for the tribe for fiscal year 1996 bears to the total amount made available for fiscal year 1996 for assistance for the operation and modernization of such public housing.

(e) Effective date

This section shall take effect on October 26, 1996.

(Pub. L. 104-330, title III, §302, Oct. 26, 1996, 110 Stat. 4036; Pub. L. 106-568, title X, §1003(g), Dec. 27, 2000, 114 Stat. 2928; Pub. L. 106-569, title V, §503(f), Dec. 27, 2000, 114 Stat. 2964.)

REFERENCES IN TEXT

Subchapter V of this chapter, referred to in subsec. (c)(2), was in the original “title V”, meaning title V of Pub. L. 104-330, which enacted subchapter V of this chapter and section 12899h-1 of Title 42, The Public Health and Welfare, amended sections 1437a, 1437c to 1437e, 1437g, 1437i, 1437n, 1437u to 1437x, 1437aaa-5, 1437aaa-6, 1439, 11371 to 11376, 11382, 11401, 11403g, 11408, 11903a, 12747, and 12838 of Title 42, repealed sections 1437aa to 1437ee of Title 42, enacted provisions set out as notes under sections 11371, 12747, and 12899h-1 of Title 42, amended provisions set out as a note under section 11301 of Title 42, and repealed provisions set out as a note under section 1701z-6 of Title 12, Banks and Banking. For complete classification of title V to the Code, see Tables.

The United States Housing Act of 1937, referred to in subsec. (d), is act Sept. 1, 1937, ch. 896, as revised generally by Pub. L. 93-383, title II, §201(a), Aug. 22, 1974, 88 Stat. 653, which is classified generally to chapter 8 (§1437 et seq.) of Title 42. Section 14 of the Act which was classified to section 1437i of Title 42, was repealed by Pub. L. 105-276, title V, §522(a), Oct. 21, 1998, 112 Stat. 2564. For complete classification of this Act to the Code, see Short Title note set out under section 1437 of Title 42 and Tables.

AMENDMENTS

2000—Subsec. (d)(1). Pub. L. 106-568, §1003(g)(1), and Pub. L. 106-569, §503(f)(1), which directed identical amendment of par. (1) by substituting subpar. (A) designation, heading, and “Except with respect to an Indian tribe described in subparagraph (B), the formula” for “The formula,” were executed by making the substitution for “The formula” to reflect the probable intent of Congress.

Subsec. (d)(1)(B). Pub. L. 106-568, §1003(g)(2), and Pub. L. 106-569, §503(f)(2), amended par. (1) identically, adding subpar. (B).

SUBCHAPTER IV—COMPLIANCE, AUDITS,
AND REPORTS

§ 4161. Remedies for noncompliance

(a) Actions by Secretary affecting grant amounts

(1) In general

Except as provided in subsection (b) of this section, if the Secretary finds after reasonable notice and opportunity for hearing that a recipient of assistance under this chapter has failed to comply substantially with any provision of this chapter, the Secretary shall—

(A) terminate payments under this chapter to the recipient;

(B) reduce payments under this chapter to the recipient by an amount equal to the amount of such payments that were not expended in accordance with this chapter;

(C) limit the availability of payments under this chapter to programs, projects, or activities not affected by such failure to comply; or

(D) in the case of noncompliance described in section 4162(b) of this title, provide a replacement tribally designated housing entity for the recipient, under section 4162 of this title.

(2) Continuance of actions

If the Secretary takes an action under subparagraph (A), (B), or (C) of paragraph (1), the Secretary shall continue such action until the Secretary determines that the failure to comply has ceased.

(3) Exception for certain actions

(A) In general

Notwithstanding any other provision of this subsection, if the Secretary makes a determination that the failure of a recipient of assistance under this chapter to comply substantially with any material provision (as that term is defined by the Secretary) of this chapter is resulting, and would continue to result, in a continuing expenditure of Federal funds in a manner that is not authorized by law, the Secretary may take an action described in paragraph (1)(C) before conducting a hearing.

(B) Procedural requirement

If the Secretary takes an action described in subparagraph (A), the Secretary shall—

(i) provide notice to the recipient at the time that the Secretary takes that action; and

(ii) conduct a hearing not later than 60 days after the date on which the Secretary provides notice under clause (i).

(C) Determination

Upon completion of a hearing under this paragraph, the Secretary shall make a determination regarding whether to continue taking the action that is the subject of the hearing, or take another action under this subsection.

(b) Noncompliance because of technical incapacity

(1) In general

If the Secretary makes a finding under subsection (a) of this section, but determines that

the failure to comply substantially with the provisions of this chapter—

(A) is not a pattern or practice of activities constituting willful noncompliance, and

(B) is a result of the limited capability or capacity of the recipient,

the Secretary may provide technical assistance for the recipient (directly or indirectly) that is designed to increase the capability and capacity of the recipient to administer assistance provided under this chapter in compliance with the requirements under this chapter, if the recipient enters into a performance agreement with the Secretary that specifies the compliance objectives that the recipient will be required to achieve by the termination date of the performance agreement.

(2) Performance agreement

The period of a performance agreement described in paragraph (1) shall be for 1 year.

(3) Review

Upon the termination of a performance agreement entered into under paragraph (1), the Secretary shall review the performance of the recipient that is a party to the agreement.

(4) Effect of review

If, on the basis of a review under paragraph (3), the Secretary determines that the recipient—

(A) has made a good faith effort to meet the compliance objectives specified in the agreement, the Secretary may enter into an additional performance agreement for the period specified in paragraph (2); and

(B) has failed to make a good faith effort to meet applicable compliance objectives, the Secretary shall determine the recipient to have failed to comply substantially with this chapter, and the recipient shall be subject to an action under subsection (a) of this section.

(c) Referral for civil action

(1) Authority

In lieu of, or in addition to, any action authorized by subsection (a) of this section, if the Secretary has reason to believe that a recipient has failed to comply substantially with any provision of this chapter, the Secretary may refer the matter to the Attorney General of the United States with a recommendation that an appropriate civil action be instituted.

(2) Civil action

Upon such a referral, the Attorney General may bring a civil action in any United States district court having venue thereof for such relief as may be appropriate, including an action to recover the amount of the assistance furnished under this chapter that was not expended in accordance with it, or for mandatory or injunctive relief.

(d) Review

(1) In general

Any recipient who receives notice under subsection (a) of this section of the termination, reduction, or limitation of payments under this chapter—

(A) may, not later than 60 days after receiving such notice, file with the United States Court of Appeals for the circuit in which such State is located, or in the United States Court of Appeals for the District of Columbia, a petition for review of the action of the Secretary; and

(B) upon the filing of any petition under subparagraph (A), shall forthwith transmit copies of the petition to the Secretary and the Attorney General of the United States, who shall represent the Secretary in the litigation.

(2) Procedure

The Secretary shall file in the court a record of the proceeding on which the Secretary based the action, as provided in section 2112 of title 28. No objection to the action of the Secretary shall be considered by the court unless such objection has been urged before the Secretary.

(3) Disposition

(A) Court proceedings

The court shall have jurisdiction to affirm or modify the action of the Secretary or to set it aside in whole or in part. The findings of fact by the Secretary, if supported by substantial evidence on the record considered as a whole, shall be conclusive. The court may order additional evidence to be taken by the Secretary, and to be made part of the record.

(B) Secretary

The Secretary—

(i) may modify the findings of fact of the Secretary, or make new findings, by reason of the new evidence so taken and filed with the court; and

(ii) shall file—

(I) such modified or new findings, which findings with respect to questions of fact shall be conclusive if supported by substantial evidence on the record considered as a whole; and

(II) the recommendation of the Secretary, if any, for the modification or setting aside of the original action of the Secretary.

(4) Finality

Upon the filing of the record with the court, the jurisdiction of the court shall be exclusive and its judgment shall be final, except that such judgment shall be subject to review by the Supreme Court of the United States upon writ of certiorari or certification as provided in section 1254 of title 28.

(Pub. L. 104-330, title IV, § 401, Oct. 26, 1996, 110 Stat. 4037; Pub. L. 106-568, title X, § 1003(h), (i), Dec. 27, 2000, 114 Stat. 2928, 2929; Pub. L. 106-569, title V, § 503(g), (h), Dec. 27, 2000, 114 Stat. 2964, 2965.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original “this Act”, meaning Pub. L. 104-330, Oct. 26, 1996, 110 Stat. 4016, as amended, known as the Native American Housing Assistance and Self-Determination Act of 1996. For complete classification of this Act to the Code, see Short Title note set out under section 4101 of this title and Tables.

AMENDMENTS

2000—Subsec. (a). Pub. L. 106-568, §1003(h), and Pub. L. 106-569, §503(g), amended subsec. (a) identically, designating existing provisions as par. (1), inserting heading, redesignating former pars. (1) to (4) as subpars. (A) to (D), respectively, of par. (1), realigning margins, designating concluding provisions as par. (2), inserting heading, substituting “If the Secretary takes an action under subparagraph (A), (B), or (C) of paragraph (1)” for “If the Secretary takes an action under paragraph (1), (2), or (3)”, and adding par. (3).

Subsec. (b). Pub. L. 106-568, §1003(i), and Pub. L. 106-569, §503(h), amended subsec. (b) identically, designating existing provisions as par. (1), inserting heading, redesignating former pars. (1) and (2) as subpars. (A) and (B), respectively, of par. (1), realigning margins of concluding provisions, inserting “, if the recipient enters into a performance agreement with the Secretary that specifies the compliance objectives that the recipient will be required to achieve by the termination date of the performance agreement” before period at end of concluding provisions, and adding pars. (2) to (4).

EFFECTIVE DATE

Section effective Oct. 1, 1997, except as otherwise expressly provided, see section 107 of Pub. L. 104-330, set out as a note under section 4101 of this title.

§ 4162. Replacement of recipient**(a) Authority**

As a condition of the Secretary making a grant under this chapter on behalf of an Indian tribe, the tribe shall agree that, notwithstanding any other provision of law, the Secretary may, only in the circumstances set forth in subsection (b) of this section, require that a replacement tribally designated housing entity serve as the recipient for the tribe, in accordance with subsection (c) of this section.

(b) Conditions of removal

The Secretary may require such replacement tribally designated housing entity for a tribe only upon a determination by the Secretary on the record after opportunity for a hearing that the recipient for the tribe has engaged in a pattern or practice of activities that constitutes substantial or willful noncompliance with the requirements under this chapter.

(c) Choice and term of replacement

If the Secretary requires that a replacement tribally designated housing entity serve as the recipient for a tribe (or tribes)—

(1) the replacement entity shall be an entity mutually agreed upon by the Secretary and the tribe (or tribes) for which the recipient was authorized to act, except that if no such entity is agreed upon before the expiration of the 60-day period beginning upon the date that the Secretary makes the determination under subsection (b) of this section, the Secretary shall act as the replacement entity until agreement is reached upon a replacement entity; and

(2) the replacement entity (or the Secretary, as provided in paragraph (1)) shall act as the tribally designated housing entity for the tribe (or tribes) for a period that expires upon—

(A) a date certain, which shall be specified by the Secretary upon making the determination under subsection (b) of this section; or

(B) the occurrence of specific conditions, which conditions shall be specified in written notice provided by the Secretary to the tribe upon making the determination under subsection (b) of this section.

(Pub. L. 104-330, title IV, §402, Oct. 26, 1996, 110 Stat. 4039.)

EFFECTIVE DATE

Section effective Oct. 1, 1997, except as otherwise expressly provided, see section 107 of Pub. L. 104-330, set out as a note under section 4101 of this title.

§ 4163. Monitoring of compliance**(a) Enforceable agreements**

Each recipient, through binding contractual agreements with owners and otherwise, shall ensure long-term compliance with the provisions of this chapter. Such measures shall provide for (1) enforcement of the provisions of this chapter by the grant beneficiary or by recipients and other intended beneficiaries, and (2) remedies for the breach of such provisions.

(b) Periodic monitoring

Not less frequently than annually, each recipient shall review the activities conducted and housing assisted under this chapter to assess compliance with the requirements of this chapter. Such review shall include onsite inspection of housing to determine compliance with applicable requirements. The results of each review shall be included in the performance report of the recipient submitted to the Secretary under section 4164 of this title and made available to the public.

(c) Performance measures

The Secretary shall establish such performance measures as may be necessary to assess compliance with the requirements of this chapter.

(Pub. L. 104-330, title IV, §403, Oct. 26, 1996, 110 Stat. 4039.)

EFFECTIVE DATE

Section effective Oct. 1, 1997, except as otherwise expressly provided, see section 107 of Pub. L. 104-330, set out as a note under section 4101 of this title.

§ 4164. Performance reports**(a) Requirement**

For each fiscal year, each recipient shall—

(1) review the progress it has made during such fiscal year in carrying out the Indian housing plan (or plans) for the Indian tribes for which it administers grant amounts; and

(2) submit a report to the Secretary (in a form acceptable to the Secretary) describing the conclusions of the review.

(b) Content

Each report under this section for a fiscal year shall—

(1) describe the use of grant amounts provided to the recipient for such fiscal year;

(2) assess the relationship of such use to the goals identified in the Indian housing plan of the grant beneficiary;

(3) indicate the programmatic accomplishments of the recipient; and

(4) describe the manner in which the recipient would change its programs as a result of its experiences.

(c) Submission

The Secretary shall establish dates for submission of reports under this section, and review such reports and make such recommendations as the Secretary considers appropriate to carry out the purposes of this chapter.

(d) Public availability

A recipient preparing a report under this section shall make the report publicly available to the citizens in the jurisdiction of the recipient in sufficient time to permit such citizens to comment on such report prior to its submission to the Secretary, and in such manner and at such times as the recipient may determine. The report shall include a summary of any comments received by the grant beneficiary or recipient from citizens in its jurisdiction regarding its program.

(Pub. L. 104-330, title IV, §404, Oct. 26, 1996, 110 Stat. 4040.)

EFFECTIVE DATE

Section effective Oct. 1, 1997, except as otherwise expressly provided, see section 107 of Pub. L. 104-330, set out as a note under section 4101 of this title.

§ 4165. Review and audit by Secretary

(a) Requirements under chapter 75 of title 31

An entity designated by an Indian tribe as a housing entity shall be treated, for purposes of chapter 75 of title 31, as a non-Federal entity that is subject to the audit requirements that apply to non-Federal entities under that chapter.

(b) Additional reviews and audits

(1) In general

In addition to any audit or review under subsection (a) of this section, to the extent the Secretary determines such action to be appropriate, the Secretary may conduct an audit or review of a recipient in order to—

(A) determine whether the recipient—

(i) has carried out—

(I) eligible activities in a timely manner; and

(II) eligible activities and certification in accordance with this chapter and other applicable law;

(ii) has a continuing capacity to carry out eligible activities in a timely manner; and

(iii) is in compliance with the Indian housing plan of the recipient; and

(B) verify the accuracy of information contained in any performance report submitted by the recipient under section 4164 of this title.

(2) On-site visits

To the extent practicable, the reviews and audits conducted under this subsection shall include on-site visits by the appropriate official of the Department of Housing and Urban Development.

(c) Review of reports

(1) In general

The Secretary shall provide each recipient that is the subject of a report made by the Secretary under this section notice that the recipient may review and comment on the report during a period of not less than 30 days after the date on which notice is issued under this paragraph.

(2) Public availability

After taking into consideration any comments of the recipient under paragraph (1), the Secretary—

(A) may revise the report; and

(B) not later than 30 days after the date on which those comments are received, shall make the comments and the report (with any revisions made under subparagraph (A)) readily available to the public.

(d) Effect of reviews

Subject to section 4161(a) of this title, after reviewing the reports and audits relating to a recipient that are submitted to the Secretary under this section, the Secretary may adjust the amount of a grant made to a recipient under this chapter in accordance with the findings of the Secretary with respect to those reports and audits.

(Pub. L. 104-330, title IV, §405, Oct. 26, 1996, 110 Stat. 4040; Pub. L. 106-568, title X, §1003(f)(2), Dec. 27, 2000, 114 Stat. 2927; Pub. L. 106-569, title V, §503(e)(2), Dec. 27, 2000, 114 Stat. 2963.)

AMENDMENTS

2000—Pub. L. 106-568 and Pub. L. 106-569 amended section identically, reenacting section catchline without change and amending text generally. Prior to amendment, section required the Secretary to make reviews and audits of recipients' activities and performance, to prepare reports, and to make adjustments in amounts of annual grants under this chapter based on the reviews and audits.

EFFECTIVE DATE

Section effective Oct. 1, 1997, except as otherwise expressly provided, see section 107 of Pub. L. 104-330, set out as a note under section 4101 of this title.

§ 4166. GAO audits

To the extent that the financial transactions of Indian tribes and recipients of grant amounts under this chapter relate to amounts provided under this chapter, such transactions may be audited by the Comptroller General of the United States under such rules and regulations as may be prescribed by the Comptroller General. The representatives of the Government Accountability Office shall have access to all books, accounts, records, reports, files, and other papers, things, or property belonging to or in use by such tribes and recipients pertaining to such financial transactions and necessary to facilitate the audit.

(Pub. L. 104-330, title IV, §406, Oct. 26, 1996, 110 Stat. 4041; Pub. L. 108-271, §8(b), July 7, 2004, 118 Stat. 814.)

AMENDMENTS

2004—Pub. L. 108-271 substituted "Government Accountability Office" for "General Accounting Office".

EFFECTIVE DATE

Section effective Oct. 1, 1997, except as otherwise expressly provided, see section 107 of Pub. L. 104-330, set out as a note under section 4101 of this title.

§ 4167. Reports to Congress**(a) In general**

Not later than 90 days after the conclusion of each fiscal year in which assistance under this chapter is made available, the Secretary shall submit to the Congress a report that contains—

- (1) a description of the progress made in accomplishing the objectives of this chapter;
- (2) a summary of the use of funds available under this chapter during the preceding fiscal year; and
- (3) a description of the aggregate outstanding loan guarantees under subchapter VI of this chapter.

(b) Related reports

The Secretary may require recipients of grant amounts under this chapter to submit to the Secretary such reports and other information as may be necessary in order for the Secretary to make the report required by subsection (a) of this section.

(Pub. L. 104-330, title IV, § 407, Oct. 26, 1996, 110 Stat. 4041.)

EFFECTIVE DATE

Section effective Oct. 1, 1997, except as otherwise expressly provided, see section 107 of Pub. L. 104-330, set out as a note under section 4101 of this title.

§ 4168. Public availability of information

Each recipient shall make any housing plan, policy, or annual report prepared by the recipient available to the general public.

(Pub. L. 104-330, title IV, § 408, as added Pub. L. 105-276, title V, § 595(e)(14)(A), Oct. 21, 1998, 112 Stat. 2658.)

SUBCHAPTER V—TERMINATION OF ASSISTANCE FOR INDIAN TRIBES UNDER INCORPORATED PROGRAMS

§ 4181. Termination of Indian housing assistance under United States Housing Act of 1937**(a) Termination of assistance**

After September 30, 1997, financial assistance may not be provided under the United States Housing Act of 1937 [42 U.S.C. 1437 et seq.] or pursuant to any commitment entered into under such Act, for Indian housing developed or operated pursuant to a contract between the Secretary and an Indian housing authority, unless such assistance is provided from amounts made available for fiscal year 1997 and pursuant to a commitment entered into before September 30, 1997. Any housing that is the subject of a contract for tenant-based assistance between the Secretary and an Indian housing authority that is terminated under this section shall, for the following fiscal year and each fiscal year thereafter, be considered to be a dwelling unit under section 4152(b)(1) of this title.

(b) Termination of restrictions on use of Indian housing

After September 30, 1997, any housing developed or operated pursuant to a contract between

the Secretary and an Indian housing authority pursuant to the United States Housing Act of 1937 [42 U.S.C. 1437 et seq.] shall not be subject to any provision of such Act or any annual contributions contract or other agreement pursuant to such Act, but shall be considered and maintained as affordable housing for purposes of this chapter.

(Pub. L. 104-330, title V, § 502, Oct. 26, 1996, 110 Stat. 4043; Pub. L. 106-568, title X, § 1003(k)(3), Dec. 27, 2000, 114 Stat. 2930; Pub. L. 106-569, title V, § 503(j)(3), Dec. 27, 2000, 114 Stat. 2966.)

REFERENCES IN TEXT

The United States Housing Act of 1937, referred to in text, is act Sept. 1, 1937, ch. 896, as revised generally by Pub. L. 93-383, title II, § 201(a), Aug. 22, 1974, 88 Stat. 653, which is classified generally to chapter 8 (§ 1437 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 1437 of Title 42 and Tables.

This chapter, referred to in subsec. (b), was in the original “this Act”, meaning Pub. L. 104-330, Oct. 26, 1996, 110 Stat. 4016, as amended, known as the Native American Housing Assistance and Self-Determination Act of 1996. For complete classification of this Act to the Code, see Short Title note set out under section 4101 of this title and Tables.

AMENDMENTS

2000—Subsec. (a). Pub. L. 106-568 and Pub. L. 106-569 amended subsec. (a) identically, inserting at end “Any housing that is the subject of a contract for tenant-based assistance between the Secretary and an Indian housing authority that is terminated under this section shall, for the following fiscal year and each fiscal year thereafter, be considered to be a dwelling unit under section 4152(b)(1) of this title.”

EFFECTIVE DATE

Section 508 of Pub. L. 104-330 provided that: “Sections 502, 503, and 507 [25 U.S.C. 4181, 4182, 4183] shall take effect on the date of the enactment of this Act [Oct. 26, 1996].”

§ 4182. Termination of new commitments for rental assistance

After September 30, 1997, financial assistance for rental housing assistance under the United States Housing Act of 1937 [42 U.S.C. 1437 et seq.] may not be provided to any Indian housing authority or tribally designated housing entity, unless such assistance is provided pursuant to a contract for such assistance entered into by the Secretary and the Indian housing authority before such date. Any such assistance provided pursuant to such a contract shall be governed by the provisions of the United States Housing Act of 1937 (as in effect before the date of the effectiveness of this chapter) and the provisions of such contract.

(Pub. L. 104-330, title V, § 503, Oct. 26, 1996, 110 Stat. 4043.)

REFERENCES IN TEXT

The United States Housing Act of 1937, referred to in text, is act Sept. 1, 1937, ch. 896, as revised generally by Pub. L. 93-383, title II, § 201(a), Aug. 22, 1974, 88 Stat. 653, which is classified generally to chapter 8 (§ 1437 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 1437 of Title 42 and Tables.

For the date of the effectiveness of this chapter, referred to in text, as Oct. 1, 1997, except as otherwise expressly provided, see section 107 of Pub. L. 104-330, set out as an Effective Date note under section 4101 of this title.

EFFECTIVE DATE

Section effective Oct. 26, 1996, see section 508 of Pub. L. 104-330, set out as a note under section 4181 of this title.

§ 4183. Savings provision

(a) Existing rights and duties

Except as provided in sections 4181 and 4182 of this title, this chapter may not be construed to affect the validity of any right, duty, or obligation of the United States or other person arising under or pursuant to any commitment or agreement lawfully entered into before October 1, 1997, under the United States Housing Act of 1937 [42 U.S.C. 1437 et seq.], subtitle D of title IV of the Cranston-Gonzalez National Affordable Housing Act [42 U.S.C. 12899 et seq.], title II of the Cranston-Gonzalez National Affordable Housing Act [42 U.S.C. 12721 et seq.], title IV of the McKinney-Vento Homeless Assistance Act [42 U.S.C. 11361 et seq.], or section 2 of the HUD Demonstration Act of 1993.

(b) Obligations under repealed provisions

Notwithstanding the amendments made by this subchapter, any obligation of the Secretary made under or pursuant to subtitle D of title IV of the Cranston-Gonzalez National Affordable Housing Act [42 U.S.C. 12899 et seq.], title II of the Cranston-Gonzalez National Affordable Housing Act [42 U.S.C. 12721 et seq.], title IV of the McKinney-Vento Homeless Assistance Act [42 U.S.C. 11361 et seq.], or section 2 of the HUD Demonstration Act of 1993 shall continue to be governed by the provisions of such Acts (as in effect before the date of the effectiveness of the amendments made by this subchapter).

(Pub. L. 104-330, title V, § 507, Oct. 26, 1996, 110 Stat. 4045; Pub. L. 106-400, § 2, Oct. 30, 2000, 114 Stat. 1675.)

REFERENCES IN TEXT

The United States Housing Act of 1937, referred to in subsec. (a), is act Sept. 1, 1937, ch. 896, as revised generally by Pub. L. 93-383, title II, Aug. 22, 1974, 88 Stat. 653, which is classified generally to chapter 8 (§ 1437 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 1437 of Title 42 and Tables.

The Cranston-Gonzalez National Affordable Housing Act, referred to in text, is Pub. L. 101-625, Nov. 28, 1990, 104 Stat. 4079, as amended. Title II of the Act, known as the HOME Investment Partnerships Act, is classified principally to subchapter II (§ 12721 et seq.) of chapter 130 of Title 42. Subtitle D of title IV of the Act is classified generally to part C (§ 12899 et seq.) of subchapter IV of chapter 130 of Title 42. For complete classification of this Act to the Code, see Short Title note set out under section 12701 of Title 42 and Tables.

The McKinney-Vento Homeless Assistance Act, referred to in text, is Pub. L. 100-77, July 22, 1987, 101 Stat. 482, as amended. Title IV of the Act is classified principally to subchapter IV (§ 11361 et seq.) of chapter 119 of Title 42. For complete classification of this Act to the Code, see Short Title note set out under section 11301 of Title 42 and Tables.

Section 2 of the HUD Demonstration Act of 1993, referred to in text, is section 2 of Pub. L. 103-120, Oct. 27,

1993, 107 Stat. 1144, which was set out as a note under section 11301 of Title 42 prior to repeal by Pub. L. 103-120, § 2(g).

This subchapter, referred to in subsec. (b), was in the original “this title”, meaning title V of Pub. L. 104-330, which enacted this subchapter and section 12899h-1 of Title 42, amended sections 1437a, 1437c to 1437e, 1437g, 1437i, 1437n, 1437u to 1437x, 1437aaa-5, 1437aaa-6, 1439, 11371 to 11376, 11382, 11401, 11403g, 11408, 11903a, 12747, and 12838 of Title 42, repealed sections 1437aa to 1437ee of Title 42, enacted provisions set out as notes under sections 11371, 12747, and 12899h-1 of Title 42, amended provisions set out as a note under section 11301 of Title 42, and repealed provisions set out as a note under section 1701z-6 of Title 12, Banks and Banking. For complete classification of title V to the Code, see Tables.

The date of the effectiveness of the amendments made by this subchapter, referred to in subsec. (b), means the effective date of the amendments made by title V of Pub. L. 104-330, which is Oct. 1, 1997, except as otherwise expressly provided. See section 107 of Pub. L. 104-330, set out as an Effective Date note under section 4101 of this title.

AMENDMENTS

2000—Pub. L. 106-400 substituted “McKinney-Vento Homeless Assistance Act” for “Stewart B. McKinney Homeless Assistance Act” in subsections (a) and (b).

EFFECTIVE DATE

Section effective Oct. 26, 1996, see section 508 of Pub. L. 104-330, set out as a note under section 4181 of this title.

SUBCHAPTER VI—FEDERAL GUARANTEES FOR FINANCING FOR TRIBAL HOUSING ACTIVITIES

§ 4191. Authority and requirements

(a) Authority

To such extent or in such amounts as provided in appropriations Acts, the Secretary may, subject to the limitations of this subchapter (including limitations designed to protect and maintain the viability of rental housing units owned or operated by the recipient that were developed under a contract between the Secretary and an Indian housing authority pursuant to the United States Housing Act of 1937 [42 U.S.C. 1437 et seq.]), and upon such terms and conditions as the Secretary may prescribe, guarantee and make commitments to guarantee, the notes or other obligations issued by Indian tribes or tribally designated housing entities with tribal approval, for the purposes of financing affordable housing activities described in section 4132 of this title and housing related community development activity as consistent with the purposes of this chapter.

(b) Terms of loans

Notes or other obligations guaranteed pursuant to this subchapter shall be in such form and denominations, have such maturities, and be subject to such conditions as may be prescribed by regulations issued by the Secretary. The Secretary may not deny a guarantee under this subchapter on the basis of the proposed repayment period for the note or other obligation, unless the period is more than 20 years or the Secretary determines that the period causes the guarantee to constitute an unacceptable financial risk.

(c) Limitation on outstanding guarantees

No guarantee or commitment to guarantee shall be made with respect to any note or other

obligation if the total outstanding notes or obligations of the issuer guaranteed under this subchapter (excluding any amount defeased under the contract entered into under section 4192(a)(1) of this title) would thereby exceed an amount equal to 5 times the amount of the grant approval for the issuer pursuant to subchapter III of this chapter.

(d) Limitation on percentage

A guarantee made under this subchapter shall guarantee repayment of 95 percent of the unpaid principal and interest due on the notes or other obligations guaranteed.

(Pub. L. 104-330, title VI, § 601, Oct. 26, 1996, 110 Stat. 4046; Pub. L. 107-292, § 7, Nov. 13, 2002, 116 Stat. 2054; Pub. L. 108-393, § 2, Oct. 30, 2004, 118 Stat. 2246.)

REFERENCES IN TEXT

The United States Housing Act of 1937, referred to in subsec. (a), is act Sept. 1, 1937, ch. 896, as revised generally by Pub. L. 93-383, title II, Aug. 22, 1974, 88 Stat. 653, which is classified generally to chapter 8 (§ 1437 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 1437 of Title 42 and Tables.

AMENDMENTS

2004—Subsec. (d). Pub. L. 108-393 added subsec. (d).

2002—Subsec. (a). Pub. L. 107-292, § 7(1), inserted “and housing related community development activity as consistent with the purposes of this chapter” after “section 4132 of this title”.

Subsecs. (b) to (d). Pub. L. 107-292, § 7(2), (3), redesignated subsecs. (c) and (d) as (b) and (c), respectively, and struck out heading and text of former subsec. (b). Text read as follows: “A guarantee under this subchapter may be used to assist an Indian tribe or housing entity in obtaining financing only if the Indian tribe or housing entity has made efforts to obtain such financing without the use of such guarantee and cannot complete such financing consistent with the timely execution of the program plans without such guarantee.”

EFFECTIVE DATE

Section 606 of Pub. L. 104-330 provided that: “This title [enacting this subchapter] shall take effect on the date of the enactment of this Act [Oct. 26, 1996].”

§ 4192. Security and repayment

(a) Requirements on issuer

To assure the repayment of notes or other obligations and charges incurred under this subchapter and as a condition for receiving such guarantees, the Secretary shall require the Indian tribe or housing entity issuing such notes or obligations to—

(1) enter into a contract, in a form acceptable to the Secretary, for repayment of notes or other obligations guaranteed under this subchapter;

(2) pledge any grant for which the issuer may become eligible under this chapter;

(3) demonstrate that the extent of such issuance and guarantee under this subchapter is within the financial capacity of the tribe and is not likely to impair the ability to use grant amounts under subchapter I of this chapter, taking into consideration the requirements under section 4133(b) of this title; and

(4) furnish, at the discretion of the Secretary, such other security as may be deemed appropriate by the Secretary in making such guarantees, including increments in local tax receipts generated by the activities assisted under this chapter or disposition proceeds from the sale of land or rehabilitated property.

(b) Repayment from grant amounts

Notwithstanding any other provision of this chapter—

(1) the Secretary may apply grants pledged pursuant to subsection (a)(2) of this section to any repayments due the United States as a result of such guarantees; and

(2) grants allocated under this chapter for an Indian tribe or housing entity (including program income derived therefrom) may be used to pay principal and interest due (including such servicing, underwriting, and other costs as may be specified in regulations issued by the Secretary) on notes or other obligations guaranteed pursuant to this subchapter.

(c) Full faith and credit

The full faith and credit of the United States is pledged to the payment of all guarantees made under this subchapter. Any such guarantee made by the Secretary shall be conclusive evidence of the eligibility of the obligations for such guarantee with respect to principal and interest, and the validity of any such guarantee so made shall be incontestable in the hands of a holder of the guaranteed obligations.

(Pub. L. 104-330, title VI, § 602, Oct. 26, 1996, 110 Stat. 4046.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a) and (b), was in the original “this Act”, meaning Pub. L. 104-330, Oct. 26, 1996, 110 Stat. 4016, as amended, known as the Native American Housing Assistance and Self-Determination Act of 1996. For complete classification of this Act to the Code, see Short Title note set out under section 4101 of this title and Tables.

EFFECTIVE DATE

Section effective Oct. 26, 1996, see section 606 of Pub. L. 104-330, set out as a note under section 4191 of this title.

§ 4193. Payment of interest

The Secretary may make, and contract to make, grants, in such amounts as may be approved in appropriations Acts, to or on behalf of an Indian tribe or housing entity issuing notes or other obligations guaranteed under this subchapter, to cover not to exceed 30 percent of the net interest cost (including such servicing, underwriting, or other costs as may be specified in regulations of the Secretary) to the borrowing entity or agency of such obligations. The Secretary may also, to the extent approved in appropriations Acts, assist the issuer of a note or other obligation guaranteed under this subchapter in the payment of all or a portion of the principal and interest amount due under the note or other obligation, if the Secretary determines that the issuer is unable to pay the amount because of circumstances of extreme hardship beyond the control of the issuer.

(Pub. L. 104-330, title VI, § 603, Oct. 26, 1996, 110 Stat. 4047.)

EFFECTIVE DATE

Section effective Oct. 26, 1996, see section 606 of Pub. L. 104-330, set out as a note under section 4191 of this title.

§ 4194. Training and information

The Secretary, in cooperation with eligible public entities, shall carry out training and information activities with respect to the guarantee program under this subchapter.

(Pub. L. 104-330, title VI, § 604, Oct. 26, 1996, 110 Stat. 4047.)

EFFECTIVE DATE

Section effective Oct. 26, 1996, see section 606 of Pub. L. 104-330, set out as a note under section 4191 of this title.

§ 4195. Limitations on amount of guarantees**(a) Aggregate fiscal year limitation**

Notwithstanding any other provision of law and subject only to the absence of qualified applicants or proposed activities and to the authority provided in this subchapter, to the extent approved or provided in appropriations Acts, the Secretary may enter into commitments to guarantee notes and obligations under this subchapter with an aggregate principal amount not to exceed \$400,000,000 for each of fiscal years 1997 through 2007.

(b) Authorization of appropriations for credit subsidy

There are authorized to be appropriated to cover the costs (as such term is defined in section 661a of title 2) of guarantees under this subchapter such sums as may be necessary for each of fiscal years 1997 through 2007.

(c) Aggregate outstanding limitation

The total amount of outstanding obligations guaranteed on a cumulative basis by the Secretary pursuant to this subchapter shall not at any time exceed \$2,000,000,000 or such higher amount as may be authorized to be appropriated for this subchapter for any fiscal year.

(d) Fiscal year limitations on tribes

The Secretary shall monitor the use of guarantees under this subchapter by Indian tribes. If the Secretary finds that 50 percent of the aggregate guarantee authority under subsection (c) of this section has been committed, the Secretary may—

(1) impose limitations on the amount of guarantees any one Indian tribe may receive in any fiscal year of \$50,000,000; or

(2) request the enactment of legislation increasing the aggregate outstanding limitation on guarantees under this subchapter.

(Pub. L. 104-330, title VI, § 605, Oct. 26, 1996, 110 Stat. 4047; Pub. L. 107-292, § 2(b), Nov. 13, 2002, 116 Stat. 2053.)

AMENDMENTS

2002—Subsecs. (a), (b). Pub. L. 107-292 substituted “1997 through 2007” for “1997, 1998, 1999, 2000, and 2001”.

EFFECTIVE DATE

Section effective Oct. 26, 1996, see section 606 of Pub. L. 104-330, set out as a note under section 4191 of this title.

SUBCHAPTER VII—OTHER HOUSING ASSISTANCE FOR NATIVE AMERICANS**§ 4211. 50-year leasehold interest in trust or restricted lands for housing purposes****(a) Authority to lease**

Notwithstanding any other provision of law, any trust or restricted Indian lands, whether tribally or individually owned, may be leased by the Indian owners, subject to the approval of the affected Indian tribe and the Secretary of the Interior, for housing development and residential purposes.

(b) Term

Each lease pursuant to subsection (a) of this section shall be for a term not exceeding 50 years.

(c) Rule of construction

This section may not be construed to repeal, limit, or affect any authority to lease any trust or restricted Indian lands that—

(1) is conferred by or pursuant to any other provision of law; or

(2) provides for leases for any period exceeding 50 years.

(d) Self-implementation

This section is intended to be self-implementing and shall not require the issuance of any rule, regulation, or order to take effect as provided in section 705.

(Pub. L. 104-330, title VII, § 702, Oct. 26, 1996, 110 Stat. 4050.)

REFERENCES IN TEXT

Section 705, referred to in subsec. (d), is section 705 of Pub. L. 104-330, which is set out as an Effective Date note below.

EFFECTIVE DATE

Section 705 of title VII of Pub. L. 104-330 provided that: “This title [enacting this subchapter and amending sections 1715z-13a and 1721 of Title 12, Banks and Banking, and sections 11902 to 11905 of Title 42, The Public Health and Welfare] and the amendments made by this title (but not including the amendments made by section 704 [amending sections 11902 to 11905 of Title 42]) shall take effect on the date of the enactment of this Act [Oct. 26, 1996].”

§ 4212. Training and technical assistance

There are authorized to be appropriated for assistance for a national organization representing Native American housing interests for providing training and technical assistance to Indian housing authorities and tribally designated housing entities such sums as may be necessary for each of fiscal years 1997 through 2007.

(Pub. L. 104-330, title VII, § 703, Oct. 26, 1996, 110 Stat. 4051; Pub. L. 107-292, § 2(c), Nov. 13, 2002, 116 Stat. 2053.)

AMENDMENTS

2002—Pub. L. 107-292 substituted “1997 through 2007” for “1997, 1998, 1999, 2000, and 2001”.

EFFECTIVE DATE

Section effective Oct. 26, 1996, see section 705 of Pub. L. 104-330, set out as a note under section 4211 of this title.

SUBCHAPTER VIII—HOUSING ASSISTANCE
FOR NATIVE HAWAIIANS

§ 4221. Definitions

In this subchapter:

(1) Department of Hawaiian Home Lands; Department

The term “Department of Hawaiian Home Lands” or “Department” means the agency or department of the government of the State of Hawaii that is responsible for the administration of the Hawaiian Homes Commission Act, 1920 (42 Stat. 108 et seq.).

(2) Director

The term “Director” means the Director of the Department of Hawaiian Home Lands.

(3) Elderly families; near-elderly families**(A) In general**

The term “elderly family” or “near-elderly family” means a family whose head (or his or her spouse), or whose sole member, is—

- (i) for an elderly family, an elderly person; or
- (ii) for a near-elderly family, a near-elderly person.

(B) Certain families included

The term “elderly family” or “near-elderly family” includes—

- (i) two or more elderly persons or near-elderly persons, as the case may be, living together; and
- (ii) one or more persons described in clause (i) living with one or more persons determined under the housing plan to be essential to their care or well-being.

(4) Hawaiian Home Lands

The term “Hawaiian Home Lands” means lands that—

- (A) have the status as Hawaiian home lands under section 204 of the Hawaiian Homes Commission Act, 1920 (42 Stat. 110); or
- (B) are acquired pursuant to that Act.

(5) Housing area

The term “housing area” means an area of Hawaiian Home Lands with respect to which the Department of Hawaiian Home Lands is authorized to provide assistance for affordable housing under this chapter.

(6) Housing entity

The term “housing entity” means the Department of Hawaiian Home Lands.

(7) Housing plan

The term “housing plan” means a plan developed by the Department of Hawaiian Home Lands.

(8) Median income

The term “median income” means, with respect to an area that is a Hawaiian housing area, the greater of—

(A) the median income for the Hawaiian housing area, which shall be determined by the Secretary; or

(B) the median income for the State of Hawaii.

(9) Native Hawaiian

The term “Native Hawaiian” means any individual who is—

- (A) a citizen of the United States; and
- (B) a descendant of the aboriginal people, who, prior to 1778, occupied and exercised sovereignty in the area that currently constitutes the State of Hawaii, as evidenced by—
 - (i) genealogical records;
 - (ii) verification by kupuna (elders) or kama’aina (long-term community residents); or
 - (iii) birth records of the State of Hawaii.

(Pub. L. 104-330, title VIII, § 801, as added Pub. L. 106-568, title II, § 203, Dec. 27, 2000, 114 Stat. 2876, and Pub. L. 106-569, title V, § 513, Dec. 27, 2000, 114 Stat. 2969.)

REFERENCES IN TEXT

The Hawaiian Homes Commission Act, 1920, referred to in pars. (1) and (4)(B), is act July 9, 1921, ch. 42, 42 Stat. 108, as amended, which was classified generally to sections 691 to 718 of Title 48, Territories and Insular Possessions, and was omitted from the Code.

This chapter, referred to in par. (5), was in the original “this Act”, meaning Pub. L. 104-330, Oct. 26, 1996, 110 Stat. 4016, as amended, known as the Native American Housing Assistance and Self-Determination Act of 1996. For complete classification of this Act to the Code, see Short Title note set out under section 4101 of this title and Tables.

CODIFICATION

Pub. L. 106-568, § 203, and Pub. L. 106-569, § 513, enacted substantially identical sections 801 of Pub. L. 104-330. This section is based on the text of section 801 of Pub. L. 104-330, as added by Pub. L. 106-569, § 513.

EFFECTIVE DATE

Pub. L. 104-330, title VIII, § 808, as added by Pub. L. 106-569, title V, § 513, Dec. 27, 2000, 114 Stat. 2979, provided that: “Except as otherwise expressly provided in this title [enacting this subchapter], this title shall take effect on the date of the enactment of the American Homeownership and Economic Opportunity Act of 2000 [Pub. L. 106-569, approved Dec. 27, 2000].”

Pub. L. 104-330, title VIII, § 808, as added by Pub. L. 106-568, title II, § 203, Dec. 27, 2000, 114 Stat. 2885, provided that: “Except as otherwise expressly provided in this title [enacting this subchapter], this title shall take effect on the date of the enactment of the Native American Housing Assistance and Self-Determination Amendments of 2000 [probably should be the Hawaiian Homelands Ownership Act of 2000, title II of Pub. L. 106-568, approved Dec. 27, 2000].”

FINDINGS

Pub. L. 106-569, title V, § 512, Dec. 27, 2000, 114 Stat. 2966, provided that: “The Congress finds that—

“(1) the United States has undertaken a responsibility to promote the general welfare of the United States by—

“(A) employing its resources to remedy the unsafe and unsanitary housing conditions and the acute shortage of decent, safe, and sanitary dwellings for families of lower income; and

“(B) developing effective partnerships with governmental and private entities to accomplish the objectives referred to in subparagraph (A);

“(2) the United States has a special responsibility for the welfare of the Native peoples of the United States, including Native Hawaiians;

“(3) pursuant to the provisions of the Hawaiian Homes Commission Act, 1920 (42 Stat. 108 et seq.) [former 48 U.S.C. 691 et seq.], the United States set aside 200,000 acres of land in the Federal territory that later became the State of Hawaii in order to establish a homeland for the native people of Hawaii—Native Hawaiians;

“(4) despite the intent of Congress in 1920 to address the housing needs of Native Hawaiians through the enactment of the Hawaiian Homes Commission Act, 1920 (42 Stat. 108 et seq.), Native Hawaiians eligible to reside on the Hawaiian home lands have been foreclosed from participating in Federal housing assistance programs available to all other eligible families in the United States;

“(5) although Federal housing assistance programs have been administered on a racially neutral basis in the State of Hawaii, Native Hawaiians continue to have the greatest unmet need for housing and the highest rates of overcrowding in the United States;

“(6) among the Native American population of the United States, Native Hawaiians experience the highest percentage of housing problems in the United States, as the percentage—

“(A) of housing problems in the Native Hawaiian population is 49 percent, as compared to—

“(i) 44 percent for American Indian and Alaska Native households in Indian country; and

“(ii) 27 percent for all other households in the United States; and

“(B) overcrowding in the Native Hawaiian population is 36 percent as compared to 3 percent for all other households in the United States;

“(7) among the Native Hawaiian population, the needs of Native Hawaiians, as that term is defined in section 801 of the Native American Housing Assistance and Self-Determination Act of 1996 [25 U.S.C. 4221] (as added by this subtitle), eligible to reside on the Hawaiian Home Lands are the most severe, as—

“(A) the percentage of overcrowding in Native Hawaiian households on the Hawaiian Home Lands is 36 percent; and

“(B) approximately 13,000 Native Hawaiians, which constitute 95 percent of the Native Hawaiians who are eligible to reside on the Hawaiian Home Lands, are in need of housing;

“(8) applying the Department of Housing and Urban Development guidelines—

“(A) 70.8 percent of Native Hawaiians who either reside or who are eligible to reside on the Hawaiian Home Lands have incomes that fall below the median family income; and

“(B) 50 percent of Native Hawaiians who either reside or who are eligible to reside on the Hawaiian Home Lands have incomes below 30 percent of the median family income;

“(9) one-third of those Native Hawaiians who are eligible to reside on the Hawaiian Home Lands pay more than 30 percent of their income for shelter, and one-half of those Native Hawaiians face overcrowding;

“(10) the extraordinarily severe housing needs of Native Hawaiians demonstrate that Native Hawaiians who either reside on, or are eligible to reside on, Hawaiian Home Lands have been denied equal access to Federal low-income housing assistance programs available to other qualified residents of the United States, and that a more effective means of addressing their housing needs must be authorized;

“(11) consistent with the recommendations of the National Commission on American Indian, Alaska Native, and Native Hawaiian Housing, and in order to address the continuing prevalence of extraordinarily severe housing needs among Native Hawaiians who either reside or are eligible to reside on the Hawaiian Home Lands, Congress finds it necessary to extend the Federal low-income housing assistance available

to American Indians and Alaska Natives under the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 et seq.) to those Native Hawaiians;

“(12) under the treaty-making power of the United States, Congress had the constitutional authority to confirm a treaty between the United States and the government that represented the Hawaiian people, and from 1826 until 1893, the United States recognized the independence of the Kingdom of Hawaii, extended full diplomatic recognition to the Hawaiian Government, and entered into treaties and conventions with the Hawaiian monarchs to govern commerce and navigation in 1826, 1842, 1849, 1875, and 1887;

“(13) the United States has recognized and reaffirmed that—

“(A) Native Hawaiians have a cultural, historic, and land-based link to the indigenous people who exercised sovereignty over the Hawaiian Islands, and that group has never relinquished its claims to sovereignty or its sovereign lands;

“(B) Congress does not extend services to Native Hawaiians because of their race, but because of their unique status as the indigenous people of a once sovereign nation as to whom the United States has established a trust relationship;

“(C) Congress has also delegated broad authority to administer a portion of the Federal trust responsibility to the State of Hawaii;

“(D) the political status of Native Hawaiians is comparable to that of American Indians and Alaska Natives; and

“(E) the aboriginal, indigenous people of the United States have—

“(i) a continuing right to autonomy in their internal affairs; and

“(ii) an ongoing right of self-determination and self-governance that has never been extinguished;

“(14) the political relationship between the United States and the Native Hawaiian people has been recognized and reaffirmed by the United States as evidenced by the inclusion of Native Hawaiians in—

“(A) the Native American Programs Act of 1974 (42 U.S.C. 2291 [2991] et seq.);

“(B) the American Indian Religious Freedom Act (42 U.S.C. 1996 et seq.);

“(C) the National Museum of the American Indian Act (20 U.S.C. 80q et seq.);

“(D) the Native American Graves Protection and Repatriation Act (25 U.S.C. 3001 et seq.);

“(E) the National Historic Preservation Act (16 U.S.C. 470 et seq.);

“(F) the Native American Languages Act of 1992 (106 Stat. 3434 [Pub. L. 102-524, see Short Title of 1992 Amendment note set out under section 2991 of Title 42, The Public Health and Welfare]);

“(G) the American Indian, Alaska Native and Native Hawaiian Culture and Arts [Art] Development Act (20 U.S.C. 4401 et seq.);

“(H) the Job Training Partnership Act ([former] 29 U.S.C. 1501 et seq.); and

“(I) the Older Americans Act of 1965 (42 U.S.C. 3001 et seq.); and

“(15) in the area of housing, the United States has recognized and reaffirmed the political relationship with the Native Hawaiian people through—

“(A) the enactment of the Hawaiian Homes Commission Act, 1920 (42 Stat. 108 et seq.), which set aside approximately 200,000 acres of public lands that became known as Hawaiian Home Lands in the Territory of Hawaii that had been ceded to the United States for homesteading by Native Hawaiians in order to rehabilitate a landless and dying people;

“(B) the enactment of the Act entitled ‘An Act to provide for the admission of the State of Hawaii into the Union’, approved March 18, 1959 (73 Stat. 4) [Pub. L. 86-3, 48 U.S.C. note prec. 491]—

“(i) by ceding to the State of Hawaii title to the public lands formerly held by the United States,

and mandating that those lands be held in public trust, for the betterment of the conditions of Native Hawaiians, as that term is defined in section 201 of the Hawaiian Homes Commission Act, 1920 (42 Stat. 108 et seq.); and

“(ii) by transferring the United States responsibility for the administration of Hawaiian Home Lands to the State of Hawaii, but retaining the authority to enforce the trust, including the exclusive right of the United States to consent to any actions affecting the lands which comprise the corpus of the trust and any amendments to the Hawaiian Homes Commission Act, 1920 (42 Stat. 108 et seq.), enacted by the legislature of the State of Hawaii affecting the rights of beneficiaries under the Act;

“(C) the authorization of mortgage loans insured by the Federal Housing Administration for the purchase, construction, or refinancing of homes on Hawaiian Home Lands under the National Housing Act (Public Law 479; 73d Congress; 12 U.S.C. 1701 et seq.);

“(D) authorizing Native Hawaiian representation on the National Commission on American Indian, Alaska Native, and Native Hawaiian Housing under Public Law 101-235 [see Tables for classification];

“(E) the inclusion of Native Hawaiians in the definition under section 3764 of title 38, United States Code, applicable to subchapter V of chapter 37 of title 38, United States Code (relating to a housing loan program for Native American veterans); and

“(F) the enactment of the Hawaiian Home Lands Recovery Act (109 Stat. 357; 48 U.S.C. 491, note prec.) [Pub. L. 104-42, title II] which establishes a process for the conveyance of Federal lands to the Department of Hawaiian Home Lands that are equivalent in value to lands acquired by the United States from the Hawaiian Home Lands inventory.”

Substantially identical provisions were contained in Pub. L. 106-568, title II, §202, Dec. 27, 2000, 114 Stat. 2872.

§ 4222. Block grants for affordable housing activities

(a) Grant authority

For each fiscal year, the Secretary shall (to the extent amounts are made available to carry out this subchapter) make a grant under this subchapter to the Department of Hawaiian Home Lands to carry out affordable housing activities for Native Hawaiian families who are eligible to reside on the Hawaiian Home Lands.

(b) Plan requirement

(1) In general

The Secretary may make a grant under this subchapter to the Department of Hawaiian Home Lands for a fiscal year only if—

(A) the Director has submitted to the Secretary a housing plan for that fiscal year; and

(B) the Secretary has determined under section 4224 of this title that the housing plan complies with the requirements of section 4223 of this title.

(2) Waiver

The Secretary may waive the applicability of the requirements under paragraph (1), in part, if the Secretary finds that the Department of Hawaiian Home Lands has not complied or cannot comply with those requirements due to circumstances beyond the control of the Department of Hawaiian Home Lands.

(c) Use of funds for affordable housing activities under plan

Except as provided in subsection (e) of this section, amounts provided under a grant under this section may be used only for affordable housing activities under this subchapter that are consistent with a housing plan approved under section 4224 of this title.

(d) Administrative expenses

(1) In general

The Secretary shall, by regulation, authorize the Department of Hawaiian Home Lands to use a percentage of any grant amounts received under this subchapter for any reasonable administrative and planning expenses of the Department relating to carrying out this subchapter and activities assisted with those amounts.

(2) Administrative and planning expenses

The administrative and planning expenses referred to in paragraph (1) include—

(A) costs for salaries of individuals engaged in administering and managing affordable housing activities assisted with grant amounts provided under this subchapter; and

(B) expenses incurred in preparing a housing plan under section 4223 of this title.

(e) Public-private partnerships

The Director shall make all reasonable efforts, consistent with the purposes of this subchapter, to maximize participation by the private sector, including nonprofit organizations and for-profit entities, in implementing a housing plan that has been approved by the Secretary under section 4223 of this title.

(Pub. L. 104-330, title VIII, §802, as added Pub. L. 106-568, title II, §203, Dec. 27, 2000, 114 Stat. 2877, and Pub. L. 106-569, title V, §513, Dec. 27, 2000, 114 Stat. 2971.)

CODIFICATION

Pub. L. 106-568, §203, and Pub. L. 106-569, §513, enacted identical sections 802 of Pub. L. 104-330. This section is based on the text of section 802 of Pub. L. 104-330, as added by Pub. L. 106-569, §513.

§ 4223. Housing plan

(a) Plan submission

The Secretary shall—

(1) require the Director to submit a housing plan under this section for each fiscal year; and

(2) provide for the review of each plan submitted under paragraph (1).

(b) Five-year plan

Each housing plan under this section shall—

(1) be in a form prescribed by the Secretary; and

(2) contain, with respect to the 5-year period beginning with the fiscal year for which the plan is submitted, the following information:

(A) MISSION STATEMENT.—A general statement of the mission of the Department of Hawaiian Home Lands to serve the needs of the low-income families to be served by the Department.

(B) GOALS AND OBJECTIVES.—A statement of the goals and objectives of the Depart-

ment of Hawaiian Home Lands to enable the Department to serve the needs identified in subparagraph (A) during the period.

(C) **ACTIVITIES PLANS.**—An overview of the activities planned during the period including an analysis of the manner in which the activities will enable the Department to meet its mission, goals, and objectives.

(c) One-year plan

A housing plan under this section shall—

(1) be in a form prescribed by the Secretary; and

(2) contain the following information relating to the fiscal year for which the assistance under this subchapter is to be made available:

(A) **GOALS AND OBJECTIVES.**—A statement of the goals and objectives to be accomplished during the period covered by the plan.

(B) **STATEMENT OF NEEDS.**—A statement of the housing needs of the low-income families served by the Department and the means by which those needs will be addressed during the period covered by the plan, including—

(i) a description of the estimated housing needs and the need for assistance for the low-income families to be served by the Department, including a description of the manner in which the geographical distribution of assistance is consistent with—

(I) the geographical needs of those families; and

(II) needs for various categories of housing assistance; and

(ii) a description of the estimated housing needs for all families to be served by the Department.

(C) **FINANCIAL RESOURCES.**—An operating budget for the Department of Hawaiian Home Lands, in a form prescribed by the Secretary, that includes—

(i) an identification and a description of the financial resources reasonably available to the Department to carry out the purposes of this subchapter, including an explanation of the manner in which amounts made available will be used to leverage additional resources; and

(ii) the uses to which the resources described in clause (i) will be committed, including—

(I) eligible and required affordable housing activities; and

(II) administrative expenses.

(D) **AFFORDABLE HOUSING RESOURCES.**—A statement of the affordable housing resources currently available at the time of the submittal of the plan and to be made available during the period covered by the plan, including—

(i) a description of the significant characteristics of the housing market in the State of Hawaii, including the availability of housing from other public sources, private market housing;

(ii) the manner in which the characteristics referred to in clause (i) influence the decision of the Department of Hawaiian Home Lands to use grant amounts to be provided under this subchapter for—

(I) rental assistance;

(II) the production of new units;

(III) the acquisition of existing units;

or

(IV) the rehabilitation of units;

(iii) a description of the structure, coordination, and means of cooperation between the Department of Hawaiian Home Lands and any other governmental entities in the development, submission, or implementation of housing plans, including a description of—

(I) the involvement of private, public, and nonprofit organizations and institutions;

(II) the use of loan guarantees under section 1715z-13b of title 12; and

(III) other housing assistance provided by the United States, including loans, grants, and mortgage insurance;

(iv) a description of the manner in which the plan will address the needs identified pursuant to subparagraph (C);

(v) a description of—

(I) any existing or anticipated homeownership programs and rental programs to be carried out during the period covered by the plan; and

(II) the requirements and assistance available under the programs referred to in subclause (I);

(vi) a description of—

(I) any existing or anticipated housing rehabilitation programs necessary to ensure the long-term viability of the housing to be carried out during the period covered by the plan; and

(II) the requirements and assistance available under the programs referred to in subclause (I);

(vii) a description of—

(I) all other existing or anticipated housing assistance provided by the Department of Hawaiian Home Lands during the period covered by the plan, including—

(aa) transitional housing;

(bb) homeless housing;

(cc) college housing; and

(dd) supportive services housing; and

(II) the requirements and assistance available under such programs;

(viii)(I) a description of any housing to be demolished or disposed of;

(II) a timetable for that demolition or disposition; and

(III) any other information required by the Secretary with respect to that demolition or disposition;

(ix) a description of the manner in which the Department of Hawaiian Home Lands will coordinate with welfare agencies in the State of Hawaii to ensure that residents of the affordable housing will be provided with access to resources to assist in obtaining employment and achieving self-sufficiency;

(x) a description of the requirements established by the Department of Hawaiian Home Lands to—

- (I) promote the safety of residents of the affordable housing;
- (II) facilitate the undertaking of crime prevention measures;
- (III) allow resident input and involvement, including the establishment of resident organizations; and
- (IV) allow for the coordination of crime prevention activities between the Department and local law enforcement officials; and

(xi) a description of the entities that will carry out the activities under the plan, including the organizational capacity and key personnel of the entities.

(E) CERTIFICATION OF COMPLIANCE.—Evidence of compliance that shall include, as appropriate—

(i) a certification that the Department of Hawaiian Home Lands will comply with—

- (I) title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.) or with the Fair Housing Act (42 U.S.C. 3601 et seq.) in carrying out this subchapter, to the extent that such title¹ is applicable; and
- (II) other applicable Federal statutes;

(ii) a certification that the Department will require adequate insurance coverage for housing units that are owned and operated or assisted with grant amounts provided under this subchapter, in compliance with such requirements as may be established by the Secretary;

(iii) a certification that policies are in effect and are available for review by the Secretary and the public governing the eligibility, admission, and occupancy of families for housing assisted with grant amounts provided under this subchapter;

(iv) a certification that policies are in effect and are available for review by the Secretary and the public governing rents charged, including the methods by which such rents or homebuyer payments are determined, for housing assisted with grant amounts provided under this subchapter; and

(v) a certification that policies are in effect and are available for review by the Secretary and the public governing the management and maintenance of housing assisted with grant amounts provided under this subchapter.

(d) Applicability of civil rights statutes

(1) In general

To the extent that the requirements of title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.) or of the Fair Housing Act (42 U.S.C. 3601 et seq.) apply to assistance provided under this subchapter, nothing in the requirements concerning discrimination on the basis of race shall be construed to prevent the provision of assistance under this subchapter—

(A) to the Department of Hawaiian Home Lands on the basis that the Department served Native Hawaiians; or

(B) to an eligible family on the basis that the family is a Native Hawaiian family.

(2) Civil rights

Program eligibility under this subchapter may be restricted to Native Hawaiians. Subject to the preceding sentence, no person may be discriminated against on the basis of race, color, national origin, religion, sex, familial status, or disability.

(e) Use of nonprofit organizations

As a condition of receiving grant amounts under this subchapter, the Department of Hawaiian Home Lands shall, to the extent practicable, provide for private nonprofit organizations experienced in the planning and development of affordable housing for Native Hawaiians to carry out affordable housing activities with those grant amounts.

(Pub. L. 104-330, title VIII, §803, as added Pub. L. 106-568, title II, §203, Dec. 27, 2000, 114 Stat. 2878, and Pub. L. 106-569, title V, §513, Dec. 27, 2000, 114 Stat. 2971.)

REFERENCES IN TEXT

The Civil Rights Act of 1964, referred to in subsecs. (c)(2)(E)(i)(I) and (d)(1), is Pub. L. 88-352, July 2, 1964, 78 Stat. 241, as amended. Title VI of the Act is classified generally to subchapter V (§2000d et seq.) of chapter 21 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 2000a of Title 42 and Tables.

The Fair Housing Act, referred to in subsecs. (c)(2)(E)(i)(I) and (d)(1), is title VIII of Pub. L. 90-284, Apr. 11, 1968, 82 Stat. 81, as amended, which is classified principally to subchapter I (§3601 et seq.) of chapter 45 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 3601 of Title 42 and Tables.

CODIFICATION

Pub. L. 106-568, §203, and Pub. L. 106-569, §513, enacted substantially identical sections 803 of Pub. L. 104-330. This section is based on the text of section 803 of Pub. L. 104-330, as added by Pub. L. 106-569, §513. Section 803 of Pub. L. 104-330, as added by Pub. L. 106-568, referred to title VIII of the Act popularly known as the Civil Rights Act of 1968 instead of the Fair Housing Act in subsecs. (c)(2)(E)(i)(I) and (d)(1). Title VIII of the Civil Rights Act of 1968 is title VIII of Pub. L. 90-284 which is known as the Fair Housing Act, see References in Text note above. The reference to “such title” in subsec. (c)(2)(E)(i)(I) probably refers to title VI of the Civil Rights Act of 1964 and title VIII of the Civil Rights Act of 1968 (the Fair Housing Act).

§ 4224. Review of plans

(a) Review and notice

(1) Review

(A) In general

The Secretary shall conduct a review of a housing plan submitted to the Secretary under section 4223 of this title to ensure that the plan complies with the requirements of that section.

(B) Limitation

The Secretary shall have the discretion to review a plan referred to in subparagraph (A) only to the extent that the Secretary considers that the review is necessary.

(2) Notice

(A) In general

Not later than 60 days after receiving a plan under section 4223 of this title, the Sec-

¹ See Codification note below.

retary shall notify the Director of the Department of Hawaiian Home Lands whether the plan complies with the requirements under that section.

(B) Effect of failure of Secretary to take action

For purposes of this subchapter, if the Secretary does not notify the Director, as required under this subsection and subsection (b) of this section, upon the expiration of the 60-day period described in subparagraph (A)—

- (i) the plan shall be considered to have been determined to comply with the requirements under section 4223 of this title; and
- (ii) the Director shall be considered to have been notified of compliance.

(b) Notice of reasons for determination of non-compliance

If the Secretary determines that a plan submitted under section 4223 of this title does not comply with the requirements of that section, the Secretary shall specify in the notice under subsection (a) of this section—

- (1) the reasons for noncompliance; and
- (2) any modifications necessary for the plan to meet the requirements of section 4223 of this title.

(c) Review

(1) In general

After the Director of the Department of Hawaiian Home Lands submits a housing plan under section 4223 of this title, or any amendment or modification to the plan to the Secretary, to the extent that the Secretary considers such action to be necessary to make a determination under this subsection, the Secretary shall review the plan (including any amendments or modifications thereto) to determine whether the contents of the plan—

- (A) set forth the information required by section 4223 of this title to be contained in the housing plan;
- (B) are consistent with information and data available to the Secretary; and
- (C) are not prohibited by or inconsistent with any provision of this chapter or any other applicable law.

(2) Incomplete plans

If the Secretary determines under this subsection that any of the appropriate certifications required under section 4223(c)(2)(E) of this title are not included in a plan, the plan shall be considered to be incomplete.

(d) Updates to plan

(1) In general

Subject to paragraph (2), after a plan under section 4223 of this title has been submitted for a fiscal year, the Director of the Department of Hawaiian Home Lands may comply with the provisions of that section for any succeeding fiscal year (with respect to information included for the 5-year period under section 4223(b) of this title or for the 1-year period under section 4223(c) of this title) by submitting only such information regarding such

changes as may be necessary to update the plan previously submitted.

(2) Complete plans

The Director shall submit a complete plan under section 4223 of this title not later than 4 years after submitting an initial plan under that section, and not less frequently than every 4 years thereafter.

(e) Effective date

This section and section 4223 of this title shall take effect on the date provided by the Secretary pursuant to section 4227(a)¹ of this title to provide for timely submission and review of the housing plan as necessary for the provision of assistance under this subchapter for fiscal year 2001.

(Pub. L. 104-330, title VIII, § 804, as added Pub. L. 106-568, title II, § 203, Dec. 27, 2000, 114 Stat. 2881, and Pub. L. 106-569, title V, § 513, Dec. 27, 2000, 114 Stat. 2975.)

CODIFICATION

Pub. L. 106-568, § 203, and Pub. L. 106-569, § 513, enacted substantially identical sections 804 of Pub. L. 104-330. This section is based on the text of section 804 of Pub. L. 104-330, as added by Pub. L. 106-569, § 513.

§ 4225. Treatment of program income and labor standards

(a) Program income

(1) Authority to retain

The Department of Hawaiian Home Lands may retain any program income that is realized from any grant amounts received by the Department under this subchapter if—

- (A) that income was realized after the initial disbursement of the grant amounts received by the Department; and
- (B) the Director agrees to use the program income for affordable housing activities in accordance with the provisions of this subchapter.

(2) Prohibition of reduction of grant

The Secretary may not reduce the grant amount for the Department of Hawaiian Home Lands based solely on—

- (A) whether the Department retains program income under paragraph (1); or
- (B) the amount of any such program income retained.

(3) Exclusion of amounts

The Secretary may, by regulation, exclude from consideration as program income any amounts determined to be so small that compliance with the requirements of this subsection would create an unreasonable administrative burden on the Department.

(b) Labor standards

(1) In general

Any contract or agreement for assistance, sale, or lease pursuant to this subchapter shall contain—

- (A) a provision requiring that an amount not less than the wages prevailing in the lo-

¹ So in original. Probably should be section “4227”.

cality, as determined or adopted (subsequent to a determination under applicable State or local law) by the Secretary, shall be paid to all architects, technical engineers, draftsmen, technicians employed in the development and all maintenance, and laborers and mechanics employed in the operation, of the affordable housing project involved; and

(B) a provision that an amount not less than the wages prevailing in the locality, as predetermined by the Secretary of Labor pursuant to sections 3141–3144, 3146, and 3147 of title 40 shall be paid to all laborers and mechanics employed in the development of the affordable housing involved.

(2) Exceptions

Paragraph (1) and provisions relating to wages required under paragraph (1) in any contract or agreement for assistance, sale, or lease under this subchapter, shall not apply to any individual who performs the services for which the individual volunteered and who is not otherwise employed at any time in the construction work and received no compensation or is paid expenses, reasonable benefits, or a nominal fee for those services.

(Pub. L. 104–330, title VIII, § 805, as added Pub. L. 106–568, title II, § 203, Dec. 27, 2000, 114 Stat. 2883, and Pub. L. 106–569, title V, § 513, Dec. 27, 2000, 114 Stat. 2976.)

CODIFICATION

“Sections 3141–3144, 3146, and 3147 of title 40” substituted in subsec. (b)(1)(B) for “the Act commonly known as the ‘Davis-Bacon Act’ (46 Stat. 1494; chapter 411; 40 U.S.C. 276a et seq.)” on authority of Pub. L. 107–217, § 5(c), Aug. 21, 2002, 116 Stat. 1303, the first section of which enacted Title 40, Public Buildings, Property, and Works.

Pub. L. 106–568, § 203, and Pub. L. 106–569, § 513, enacted substantially identical sections 805 of Pub. L. 104–330. This section is based on the text of section 805 of Pub. L. 104–330, as added by Pub. L. 106–569, § 513.

§ 4226. Environmental review

(a) In general

(1) Release of funds

(A) In general

The Secretary may carry out the alternative environmental protection procedures described in subparagraph (B) in order to ensure—

(i) that the policies of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and other provisions of law that further the purposes of such Act (as specified in regulations issued by the Secretary) are most effectively implemented in connection with the expenditure of grant amounts provided under this subchapter; and

(ii) to the public undiminished protection of the environment.

(B) Alternative environmental protection procedure

In lieu of applying environmental protection procedures otherwise applicable, the Secretary may by regulation provide for the release of funds for specific projects to the

Department of Hawaiian Home Lands if the Director of the Department assumes all of the responsibilities for environmental review, decisionmaking, and action under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), and such other provisions of law as the regulations of the Secretary specify, that would apply to the Secretary were the Secretary to undertake those projects as Federal projects.

(2) Regulations

(A) In general

The Secretary shall issue regulations to carry out this section only after consultation with the Council on Environmental Quality.

(B) Contents

The regulations issued under this paragraph shall—

(i) provide for the monitoring of the environmental reviews performed under this section;

(ii) in the discretion of the Secretary, facilitate training for the performance of such reviews; and

(iii) provide for the suspension or termination of the assumption of responsibilities under this section.

(3) Effect on assumed responsibility

The duty of the Secretary under paragraph (2)(B) shall not be construed to limit or reduce any responsibility assumed by the Department of Hawaiian Home Lands for grant amounts with respect to any specific release of funds.

(b) Procedure

(1) In general

The Secretary shall authorize the release of funds subject to the procedures under this section only if, not less than 15 days before that approval and before any commitment of funds to such projects, the Director of the Department of Hawaiian Home Lands submits to the Secretary a request for such release accompanied by a certification that meets the requirements of subsection (c) of this section.

(2) Effect of approval

The approval of the Secretary of a certification described in paragraph (1) shall be deemed to satisfy the responsibilities of the Secretary under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and such other provisions of law as the regulations of the Secretary specify to the extent that those responsibilities relate to the releases of funds for projects that are covered by that certification.

(c) Certification

A certification under the procedures under this section shall—

(1) be in a form acceptable to the Secretary;

(2) be executed by the Director of the Department of Hawaiian Home Lands;

(3) specify that the Department of Hawaiian Home Lands has fully carried out its responsibilities as described under subsection (a) of this section; and

(4) specify that the Director—

(A) consents to assume the status of a responsible Federal official under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and each provision of law specified in regulations issued by the Secretary to the extent that those laws apply by reason of subsection (a) of this section; and

(B) is authorized and consents on behalf of the Department of Hawaiian Home Lands and the Director to accept the jurisdiction of the Federal courts for the purpose of enforcement of the responsibilities of the Director of the Department of Hawaiian Home Lands as such an official.

(Pub. L. 104-330, title VIII, § 806, as added Pub. L. 106-568, title II, § 203, Dec. 27, 2000, 114 Stat. 2883, and Pub. L. 106-569, title V, § 513, Dec. 27, 2000, 114 Stat. 2977.)

REFERENCES IN TEXT

The National Environmental Policy Act of 1969, referred to in subsecs. (a)(1), (b)(2), and (c)(4)(A), is Pub. L. 91-190, Jan. 1, 1970, 83 Stat. 852, as amended, which is classified generally to chapter 55 (§ 4321 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of Title 42 and Tables.

CODIFICATION

Pub. L. 106-568, § 203, and Pub. L. 106-569, § 513, enacted substantially identical sections 806 of Pub. L. 104-330. This section is based on the text of section 806 of Pub. L. 104-330, as added by Pub. L. 106-569, § 513.

§ 4227. Regulations

The Secretary shall issue final regulations necessary to carry out this subchapter not later than October 1, 2001.

(Pub. L. 104-330, title VIII, § 807, as added Pub. L. 106-568, title II, § 203, Dec. 27, 2000, 114 Stat. 2885, and Pub. L. 106-569, title V, § 513, Dec. 27, 2000, 114 Stat. 2979.)

CODIFICATION

Pub. L. 106-568, § 203, and Pub. L. 106-569, § 513, enacted substantially identical sections 807 of Pub. L. 104-330. This section is based on the text of section 807 of Pub. L. 104-330, as added by Pub. L. 106-569, § 513. Section 807 of Pub. L. 104-330, as added by Pub. L. 106-568, § 203, required the issuance of final regulations not later than October 1, 2000, instead of October 1, 2001.

§ 4228. Affordable housing activities

(a)¹ National objectives and eligible families

(1) Primary objective

The national objectives of this subchapter are—

(A) to assist and promote affordable housing activities to develop, maintain, and operate affordable housing in safe and healthy environments for occupancy by low-income Native Hawaiian families;

(B) to ensure better access to private mortgage markets and to promote self-sufficiency of low-income Native Hawaiian families;

(C) to coordinate activities to provide housing for low-income Native Hawaiian

families with Federal, State, and local activities to further economic and community development;

(D) to plan for and integrate infrastructure resources on the Hawaiian Home Lands with housing development; and

(E) to—

(i) promote the development of private capital markets; and

(ii) allow the markets referred to in clause (i) to operate and grow, thereby benefiting Native Hawaiian communities.

(2) Eligible families

(A) In general

Except as provided under subparagraph (B), assistance for eligible housing activities under this subchapter shall be limited to low-income Native Hawaiian families.

(B) Exception to low-income requirement

(i) In general

The Director may provide assistance for homeownership activities under—

(I) section 4229(b) of this title;

(II) model activities under section 4229(f) of this title; or

(III) loan guarantee activities under section 1715z-13b of title 12 to Native Hawaiian families who are not low-income families, to the extent that the Secretary approves the activities under that section to address a need for housing for those families that cannot be reasonably met without that assistance.

(ii) Limitations

The Secretary shall establish limitations on the amount of assistance that may be provided under this subchapter for activities for families that are not low-income families.

(C) Other families

Notwithstanding paragraph (1), the Director may provide housing or housing assistance provided through affordable housing activities assisted with grant amounts under this subchapter to a family that is not composed of Native Hawaiians if—

(i) the Department determines that the presence of the family in the housing involved is essential to the well-being of Native Hawaiian families; and

(ii) the need for housing for the family cannot be reasonably met without the assistance.

(D) Preference

(i) In general

A housing plan submitted under section 4223 of this title may authorize a preference, for housing or housing assistance provided through affordable housing activities assisted with grant amounts provided under this subchapter to be provided, to the extent practicable, to families that are eligible to reside on the Hawaiian Home Lands.

(ii) Application

In any case in which a housing plan provides for preference described in clause (i),

¹ So in original. No subsec. (b) has been enacted.

the Director shall ensure that housing activities that are assisted with grant amounts under this subchapter are subject to that preference.

(E) Use of nonprofit organizations

As a condition of receiving grant amounts under this subchapter, the Department of Hawaiian Home Lands, shall to the extent practicable, provide for private nonprofit organizations experienced in the planning and development of affordable housing for Native Hawaiians to carry out affordable housing activities with those grant amounts.

(Pub. L. 104-330, title VIII, § 809, as added Pub. L. 106-568, title II, § 203, Dec. 27, 2000, 114 Stat. 2885, and Pub. L. 106-569, title V, § 513, Dec. 27, 2000, 114 Stat. 2979.)

CODIFICATION

Pub. L. 106-568, § 203, and Pub. L. 106-569, § 513, enacted identical sections 809 of Pub. L. 104-330. This section is based on the text of section 809 of Pub. L. 104-330, as added by Pub. L. 106-569, § 513.

§ 4229. Eligible affordable housing activities

(a) In general

Affordable housing activities under this section are activities conducted in accordance with the requirements of section 4230 of this title to—

- (1) develop or to support affordable housing for rental or homeownership; or
- (2) provide housing services with respect to affordable housing, through the activities described in subsection (b) of this section.

(b) Activities

The activities described in this subsection are the following:

(1) Development

The acquisition, new construction, reconstruction, or moderate or substantial rehabilitation of affordable housing, which may include—

- (A) real property acquisition;
- (B) site improvement;
- (C) the development of utilities and utility services;
- (D) conversion;
- (E) demolition;
- (F) financing;
- (G) administration and planning; and
- (H) other related activities.

(2) Housing services

The provision of housing-related services for affordable housing, including—

- (A) housing counseling in connection with rental or homeownership assistance;
- (B) the establishment and support of resident organizations and resident management corporations;
- (C) energy auditing;
- (D) activities related to the provisions of self-sufficiency and other services; and
- (E) other services related to assisting owners, tenants, contractors, and other entities participating or seeking to participate in other housing activities assisted pursuant to this section.

(3) Housing management services

The provision of management services for affordable housing, including—

- (A) the preparation of work specifications;
- (B) loan processing;
- (C) inspections;
- (D) tenant selection;
- (E) management of tenant-based rental assistance; and
- (F) management of affordable housing projects.

(4) Crime prevention and safety activities

The provision of safety, security, and law enforcement measures and activities appropriate to protect residents of affordable housing from crime.

(5) Model activities

Housing activities under model programs that are—

- (A) designed to carry out the purposes of this subchapter; and
- (B) specifically approved by the Secretary as appropriate for the purpose referred to in subparagraph (A).

(Pub. L. 104-330, title VIII, § 810, as added Pub. L. 106-568, title II, § 203, Dec. 27, 2000, 114 Stat. 2886, and Pub. L. 106-569, title V, § 513, Dec. 27, 2000, 114 Stat. 2980.)

CODIFICATION

Pub. L. 106-568, § 203, and Pub. L. 106-569, § 513, enacted identical sections 810 of Pub. L. 104-330. This section is based on the text of section 810 of Pub. L. 104-330, as added by Pub. L. 106-569, § 513.

§ 4230. Program requirements

(a) Rents

(1) Establishment

Subject to paragraph (2), as a condition to receiving grant amounts under this subchapter, the Director shall develop written policies governing rents and homebuyer payments charged for dwelling units assisted under this subchapter, including methods by which such rents and homebuyer payments are determined.

(2) Maximum rent

In the case of any low-income family residing in a dwelling unit assisted with grant amounts under this subchapter, the monthly rent or homebuyer payment (as applicable) for that dwelling unit may not exceed 30 percent of the monthly adjusted income of that family.

(b) Maintenance and efficient operation

(1) In general

The Director shall, using amounts of any grants received under this subchapter, reserve and use for operating under section 4229 of this title such amounts as may be necessary to provide for the continued maintenance and efficient operation of such housing.

(2) Disposal of certain housing

This subsection may not be construed to prevent the Director, or any entity funded by the Department, from demolishing or disposing of housing, pursuant to regulations established by the Secretary.

(c) Insurance coverage

As a condition to receiving grant amounts under this subchapter, the Director shall require

adequate insurance coverage for housing units that are owned or operated or assisted with grant amounts provided under this subchapter.

(d) Eligibility for admission

As a condition to receiving grant amounts under this subchapter, the Director shall develop written policies governing the eligibility, admission, and occupancy of families for housing assisted with grant amounts provided under this subchapter.

(e) Management and maintenance

As a condition to receiving grant amounts under this subchapter, the Director shall develop policies governing the management and maintenance of housing assisted with grant amounts under this subchapter.

(Pub. L. 104-330, title VIII, §811, as added Pub. L. 106-568, title II, §203, Dec. 27, 2000, 114 Stat. 2887, and Pub. L. 106-569, title V, §513, Dec. 27, 2000, 114 Stat. 2981.)

CODIFICATION

Pub. L. 106-568, §203, and Pub. L. 106-569, §513, enacted identical sections 811 of Pub. L. 104-330. This section is based on the text of section 811 of Pub. L. 104-330, as added by Pub. L. 106-569, §513.

§ 4231. Types of investments

(a) In general

Subject to section 4230 of this title and an applicable housing plan approved under section 4223 of this title, the Director shall have—

(1) the discretion to use grant amounts for affordable housing activities through the use of—

- (A) equity investments;
- (B) interest-bearing loans or advances;
- (C) noninterest-bearing loans or advances;
- (D) interest subsidies;
- (E) the leveraging of private investments;

or

(F) any other form of assistance that the Secretary determines to be consistent with the purposes of this subchapter; and

(2) the right to establish the terms of assistance provided with funds referred to in paragraph (1).

(b) Investments

The Director may invest grant amounts for the purposes of carrying out affordable housing activities in investment securities and other obligations, as approved by the Secretary.

(Pub. L. 104-330, title VIII, §812, as added Pub. L. 106-568, title II, §203, Dec. 27, 2000, 114 Stat. 2888, and Pub. L. 106-569, title V, §513, Dec. 27, 2000, 114 Stat. 2982.)

CODIFICATION

Pub. L. 106-568, §203, and Pub. L. 106-569, §513, enacted identical sections 812 of Pub. L. 104-330. This section is based on the text of section 812 of Pub. L. 104-330, as added by Pub. L. 106-569, §513.

§ 4232. Low-income requirement and income targeting

(a) In general

Housing shall qualify for affordable housing for purposes of this subchapter only if—

(1) each dwelling unit in the housing—

(A) in the case of rental housing, is made available for occupancy only by a family that is a low-income family at the time of the initial occupancy of that family of that unit; and

(B) in the case of housing for homeowner-ship, is made available for purchase only by a family that is a low-income family at the time of purchase; and

(2) each dwelling unit in the housing will remain affordable, according to binding commitments satisfactory to the Secretary, for—

(A) the remaining useful life of the property (as determined by the Secretary) without regard to the term of the mortgage or to transfer of ownership; or

(B) such other period as the Secretary determines is the longest feasible period of time consistent with sound economics and the purposes of this subchapter, except upon a foreclosure by a lender (or upon other transfer in lieu of foreclosure) if that action—

(i) recognizes any contractual or legal rights of any public agency, nonprofit sponsor, or other person or entity to take an action that would—

(I) avoid termination of low-income affordability, in the case of foreclosure; or

(II) transfer ownership in lieu of foreclosure; and

(ii) is not for the purpose of avoiding low-income affordability restrictions, as determined by the Secretary.

(b) Exception

Notwithstanding subsection (a) of this section, housing assistance pursuant to section 4228(a)(2)(B) of this title shall be considered affordable housing for purposes of this subchapter.

(Pub. L. 104-330, title VIII, §813, as added Pub. L. 106-568, title II, §203, Dec. 27, 2000, 114 Stat. 2888, and Pub. L. 106-569, title V, §513, Dec. 27, 2000, 114 Stat. 2982.)

CODIFICATION

Pub. L. 106-568, §203, and Pub. L. 106-569, §513, enacted identical sections 813 of Pub. L. 104-330. This section is based on the text of section 813 of Pub. L. 104-330, as added by Pub. L. 106-569, §513.

§ 4233. Lease requirements and tenant selection

(a) Leases

Except to the extent otherwise provided by or inconsistent with the laws of the State of Hawaii, in renting dwelling units in affordable housing assisted with grant amounts provided under this subchapter, the Director, owner, or manager shall use leases that—

(1) do not contain unreasonable terms and conditions;

(2) require the Director, owner, or manager to maintain the housing in compliance with applicable housing codes and quality standards;

(3) require the Director, owner, or manager to give adequate written notice of termination of the lease, which shall be the period of time required under applicable State or local law;

(4) specify that, with respect to any notice of eviction or termination, notwithstanding any State or local law, a resident shall be informed of the opportunity, before any hearing or trial, to examine any relevant documents, record, or regulations directly related to the eviction or termination;

(5) require that the Director, owner, or manager may not terminate the tenancy, during the term of the lease, except for serious or repeated violation of the terms and conditions of the lease, violation of applicable Federal, State, or local law, or for other good cause; and

(6) provide that the Director, owner, or manager may terminate the tenancy of a resident for any activity, engaged in by the resident, any member of the household of the resident, or any guest or other person under the control of the resident, that—

(A) threatens the health or safety of, or right to peaceful enjoyment of the premises by, other residents or employees of the Department, owner, or manager;

(B) threatens the health or safety of, or right to peaceful enjoyment of their premises by, persons residing in the immediate vicinity of the premises; or

(C) is criminal activity (including drug-related criminal activity) on or off the premises.

(b) Tenant or homebuyer selection

As a condition to receiving grant amounts under this subchapter, the Director shall adopt and use written tenant and homebuyer selection policies and criteria that—

(1) are consistent with the purpose of providing housing for low-income families;

(2) are reasonably related to program eligibility and the ability of the applicant to perform the obligations of the lease; and

(3) provide for—

(A) the selection of tenants and homebuyers from a written waiting list in accordance with the policies and goals set forth in an applicable housing plan approved under section 4223 of this title; and

(B) the prompt notification in writing of any rejected applicant of the grounds for that rejection.

(Pub. L. 104-330, title VIII, §814, as added Pub. L. 106-568, title II, §203, Dec. 27, 2000, 114 Stat. 2889, and Pub. L. 106-569, title V, §513, Dec. 27, 2000, 114 Stat. 2983.)

CODIFICATION

Pub. L. 106-568, §203, and Pub. L. 106-569, §513, enacted identical sections 814 of Pub. L. 104-330. This section is based on the text of section 814 of Pub. L. 104-330, as added by Pub. L. 106-569, §513.

§ 4234. Repayment

If the Department of Hawaiian Home Lands uses grant amounts to provide affordable housing under activities under this subchapter and, at any time during the useful life of the housing, the housing does not comply with the requirement under section 4232(a)(2) of this title, the Secretary shall—

(1) reduce future grant payments on behalf of the Department by an amount equal to the

grant amounts used for that housing (under the authority of section 4238(a)(2) of this title); or

(2) require repayment to the Secretary of any amount equal to those grant amounts.

(Pub. L. 104-330, title VIII, §815, as added Pub. L. 106-568, title II, §203, Dec. 27, 2000, 114 Stat. 2890, and Pub. L. 106-569, title V, §513, Dec. 27, 2000, 114 Stat. 2984.)

CODIFICATION

Pub. L. 106-568, §203, and Pub. L. 106-569, §513, enacted identical sections 815 of Pub. L. 104-330. This section is based on the text of section 815 of Pub. L. 104-330, as added by Pub. L. 106-569, §513.

§ 4235. Annual allocation

For each fiscal year, the Secretary shall allocate any amounts made available for assistance under this subchapter for the fiscal year, in accordance with the formula established pursuant to section 4236 of this title to the Department of Hawaiian Home Lands if the Department complies with the requirements under this subchapter for a grant under this subchapter.

(Pub. L. 104-330, title VIII, §816, as added Pub. L. 106-568, title II, §203, Dec. 27, 2000, 114 Stat. 2890, and Pub. L. 106-569, title V, §513, Dec. 27, 2000, 114 Stat. 2984.)

CODIFICATION

Pub. L. 106-568, §203, and Pub. L. 106-569, §513, enacted identical sections 816 of Pub. L. 104-330. This section is based on the text of section 816 of Pub. L. 104-330, as added by Pub. L. 106-569, §513.

§ 4236. Allocation formula

(a) Establishment

The Secretary shall, by regulation issued not later than the expiration of the 6-month period beginning on December 27, 2000, in the manner provided under section 4227 of this title, establish a formula to provide for the allocation of amounts available for a fiscal year for block grants under this subchapter in accordance with the requirements of this section.

(b) Factors for determination of need

The formula under subsection (a) of this section shall be based on factors that reflect the needs for assistance for affordable housing activities, including—

(1) the number of low-income dwelling units owned or operated at the time pursuant to a contract between the Director and the Secretary;

(2) the extent of poverty and economic distress and the number of Native Hawaiian families eligible to reside on the Hawaiian Home Lands; and

(3) any other objectively measurable conditions that the Secretary and the Director may specify.

(c) Other factors for consideration

In establishing the formula under subsection (a) of this section, the Secretary shall consider the relative administrative capacities of the Department of Hawaiian Home Lands and other challenges faced by the Department, including—

(1) geographic distribution within Hawaiian Home Lands; and

(2) technical capacity.

(d) Effective date

This section shall take effect on December 27, 2000.

(Pub. L. 104-330, title VIII, § 817, as added Pub. L. 106-568, title II, § 203, Dec. 27, 2000, 114 Stat. 2890, and Pub. L. 106-569, title V, § 513, Dec. 27, 2000, 114 Stat. 2984.)

CODIFICATION

Pub. L. 106-568, § 203, and Pub. L. 106-569, § 513, enacted substantially identical sections 817 of Pub. L. 104-330. This section is based on the text of section 817 of Pub. L. 104-330, as added by Pub. L. 106-569, § 513.

§ 4237. Remedies for noncompliance

(a) Actions by Secretary affecting grant amounts

(1) In general

Except as provided in subsection (b) of this section, if the Secretary finds after reasonable notice and opportunity for a hearing that the Department of Hawaiian Home Lands has failed to comply substantially with any provision of this subchapter, the Secretary shall—

(A) terminate payments under this subchapter to the Department;

(B) reduce payments under this subchapter to the Department by an amount equal to the amount of such payments that were not expended in accordance with this subchapter; or

(C) limit the availability of payments under this subchapter to programs, projects, or activities not affected by such failure to comply.

(2) Actions

If the Secretary takes an action under subparagraph (A), (B), or (C) of paragraph (1), the Secretary shall continue that action until the Secretary determines that the failure by the Department to comply with the provision has been remedied by the Department and the Department is in compliance with that provision.

(b) Noncompliance because of a technical incapacity

The Secretary may provide technical assistance for the Department, either directly or indirectly, that is designed to increase the capability and capacity of the Director of the Department to administer assistance provided under this subchapter in compliance with the requirements under this subchapter if the Secretary makes a finding under subsection (a) of this section, but determines that the failure of the Department to comply substantially with the provisions of this subchapter—

(1) is not a pattern or practice of activities constituting willful noncompliance; and

(2) is a result of the limited capability or capacity of the Department of Hawaiian Home Lands.

(c) Referral for civil action

(1) Authority

In lieu of, or in addition to, any action that the Secretary may take under subsection (a) of this section, if the Secretary has reason to believe that the Department of Hawaiian

Home Lands has failed to comply substantially with any provision of this subchapter, the Secretary may refer the matter to the Attorney General of the United States with a recommendation that an appropriate civil action be instituted.

(2) Civil action

Upon receiving a referral under paragraph (1), the Attorney General may bring a civil action in any United States district court of appropriate jurisdiction for such relief as may be appropriate, including an action—

(A) to recover the amount of the assistance furnished under this subchapter that was not expended in accordance with this subchapter; or

(B) for mandatory or injunctive relief.

(d) Review

(1) In general

If the Director receives notice under subsection (a) of this section of the termination, reduction, or limitation of payments under this chapter, the Director—

(A) may, not later than 60 days after receiving such notice, file with the United States Court of Appeals for the Ninth Circuit, or in the United States Court of Appeals for the District of Columbia, a petition for review of the action of the Secretary; and

(B) upon the filing of any petition under subparagraph (A), shall forthwith transmit copies of the petition to the Secretary and the Attorney General of the United States, who shall represent the Secretary in the litigation.

(2) Procedure

(A) In general

The Secretary shall file in the court a record of the proceeding on which the Secretary based the action, as provided in section 2112 of title 28.

(B) Objections

No objection to the action of the Secretary shall be considered by the court unless the Department has registered the objection before the Secretary.

(3) Disposition

(A) Court proceedings

(i) Jurisdiction of court

The court shall have jurisdiction to affirm or modify the action of the Secretary or to set the action aside in whole or in part.

(ii) Findings of fact

If supported by substantial evidence on the record considered as a whole, the findings of fact by the Secretary shall be conclusive.

(iii) Addition

The court may order evidence, in addition to the evidence submitted for review under this subsection, to be taken by the Secretary, and to be made part of the record.

(B) Secretary**(i) In general**

The Secretary, by reason of the additional evidence referred to in subparagraph (A) and filed with the court—

(I) may—

- (aa) modify the findings of fact of the Secretary; or
- (bb) make new findings; and

(II) shall file—

- (aa) such modified or new findings; and
- (bb) the recommendation of the Secretary, if any, for the modification or setting aside of the original action of the Secretary.

(ii) Findings

The findings referred to in clause (i)(II)(bb) shall, with respect to a question of fact, be considered to be conclusive if those findings are—

- (I) supported by substantial evidence on the record; and
- (II) considered as a whole.

(4) Finality**(A) In general**

Except as provided in subparagraph (B), upon the filing of the record under this subsection with the court—

- (i) the jurisdiction of the court shall be exclusive; and
- (ii) the judgment of the court shall be final.

(B) Review by Supreme Court

A judgment under subparagraph (A) shall be subject to review by the Supreme Court of the United States upon writ of certiorari or certification, as provided in section 1254 of title 28.

(Pub. L. 104-330, title VIII, § 818, as added Pub. L. 106-568, title II, § 203, Dec. 27, 2000, 114 Stat. 2891, and Pub. L. 106-569, title V, § 513, Dec. 27, 2000, 114 Stat. 2985.)

CODIFICATION

Pub. L. 106-568, § 203, and Pub. L. 106-569, § 513, enacted identical sections 818 of Pub. L. 104-330. This section is based on the text of section 818 of Pub. L. 104-330, as added by Pub. L. 106-569, § 513.

§ 4238. Monitoring of compliance**(a) Enforceable agreements****(1) In general**

The Director, through binding contractual agreements with owners or other authorized entities, shall ensure long-term compliance with the provisions of this subchapter.

(2) Measures

The measures referred to in paragraph (1) shall provide for—

- (A) to the extent allowable by Federal and State law, the enforcement of the provisions of this subchapter by the Department and the Secretary; and
- (B) remedies for breach of the provisions referred to in paragraph (1).

(b) Periodic monitoring**(1) In general**

Not less frequently than annually, the Director shall review the activities conducted and housing assisted under this subchapter to assess compliance with the requirements of this subchapter.

(2) Review

Each review under paragraph (1) shall include onsite inspection of housing to determine compliance with applicable requirements.

(3) Results

The results of each review under paragraph (1) shall be—

- (A) included in a performance report of the Director submitted to the Secretary under section 4239 of this title; and
- (B) made available to the public.

(c) Performance measures

The Secretary shall establish such performance measures as may be necessary to assess compliance with the requirements of this subchapter.

(Pub. L. 104-330, title VIII, § 819, as added Pub. L. 106-568, title II, § 203, Dec. 27, 2000, 114 Stat. 2893, and Pub. L. 106-569, title V, § 513, Dec. 27, 2000, 114 Stat. 2987.)

CODIFICATION

Pub. L. 106-568, § 203, and Pub. L. 106-569, § 513, enacted identical sections 819 of Pub. L. 104-330. This section is based on the text of section 819 of Pub. L. 104-330, as added by Pub. L. 106-569, § 513.

§ 4239. Performance reports**(a) Requirement**

For each fiscal year, the Director shall—

- (1) review the progress the Department has made during that fiscal year in carrying out the housing plan submitted by the Department under section 4223 of this title; and
- (2) submit a report to the Secretary (in a form acceptable to the Secretary) describing the conclusions of the review.

(b) Content

Each report submitted under this section for a fiscal year shall—

- (1) describe the use of grant amounts provided to the Department of Hawaiian Home Lands for that fiscal year;
- (2) assess the relationship of the use referred to in paragraph (1) to the goals identified in the housing plan;
- (3) indicate the programmatic accomplishments of the Department; and
- (4) describe the manner in which the Department would change its housing plan submitted under section 4223 of this title as a result of its experiences.

(c) Submissions

The Secretary shall—

- (1) establish a date for submission of each report under this section;
- (2) review each such report; and
- (3) with respect to each such report, make recommendations as the Secretary considers

appropriate to carry out the purposes of this subchapter.

(d) Public availability

(1) Comments by beneficiaries

In preparing a report under this section, the Director shall make the report publicly available to the beneficiaries of the Hawaiian Homes Commission Act, 1920 (42 Stat. 108 et seq.) and give a sufficient amount of time to permit those beneficiaries to comment on that report before it is submitted to the Secretary (in such manner and at such time as the Director may determine).

(2) Summary of comments

The report shall include a summary of any comments received by the Director from beneficiaries under paragraph (1) regarding the program to carry out the housing plan.

(Pub. L. 104-330, title VIII, § 820, as added Pub. L. 106-568, title II, § 203, Dec. 27, 2000, 114 Stat. 2893, and Pub. L. 106-569, title V, § 513, Dec. 27, 2000, 114 Stat. 2987.)

REFERENCES IN TEXT

The Hawaiian Homes Commission Act, 1920, referred to in subsec. (d)(1), is act July 9, 1921, ch. 42, 42 Stat. 108, as amended, which was classified generally to sections 691 to 718 of Title 48, Territories and Insular Possessions, and was omitted from the Code.

CODIFICATION

Pub. L. 106-568, § 203, and Pub. L. 106-569, § 513, enacted identical sections 820 of Pub. L. 104-330. This section is based on the text of section 820 of Pub. L. 104-330, as added by Pub. L. 106-569, § 513.

§ 4240. Review and audit by Secretary

(a) Annual review

(1) In general

The Secretary shall, not less frequently than on an annual basis, make such reviews and audits as may be necessary or appropriate to determine whether—

(A) the Director has—

(i) carried out eligible activities under this subchapter in a timely manner;

(ii) carried out and made certifications in accordance with the requirements and the primary objectives of this subchapter and with other applicable laws; and

(iii) a continuing capacity to carry out the eligible activities in a timely manner;

(B) the Director has complied with the housing plan submitted by the Director under section 4223 of this title; and

(C) the performance reports of the Department under section 4240¹ of this title are accurate.

(2) Onsite visits

Each review conducted under this section shall, to the extent practicable, include onsite visits by employees of the Department of Housing and Urban Development.

(b) Report by Secretary

The Secretary shall give the Department of Hawaiian Home Lands not less than 30 days to

review and comment on a report under this subsection. After taking into consideration the comments of the Department, the Secretary may revise the report and shall make the comments of the Department and the report with any revisions, readily available to the public not later than 30 days after receipt of the comments of the Department.

(c) Effect of reviews

The Secretary may make appropriate adjustments in the amount of annual grants under this subchapter in accordance with the findings of the Secretary pursuant to reviews and audits under this section. The Secretary may adjust, reduce, or withdraw grant amounts, or take other action as appropriate in accordance with the reviews and audits of the Secretary under this section, except that grant amounts already expended on affordable housing activities may not be recaptured or deducted from future assistance provided to the Department of Hawaiian Home Lands.

(Pub. L. 104-330, title VIII, § 821, as added Pub. L. 106-568, title II, § 203, Dec. 27, 2000, 114 Stat. 2894, and Pub. L. 106-569, title V, § 513, Dec. 27, 2000, 114 Stat. 2988.)

CODIFICATION

Pub. L. 106-568, § 203, and Pub. L. 106-569, § 513, enacted identical sections 821 of Pub. L. 104-330. This section is based on the text of section 821 of Pub. L. 104-330, as added by Pub. L. 106-569, § 513.

§ 4241. Government Accountability Office audits

To the extent that the financial transactions of the Department of Hawaiian Home Lands involving grant amounts under this subchapter relate to amounts provided under this subchapter, those transactions may be audited by the Comptroller General of the United States under such regulations as may be prescribed by the Comptroller General. The Comptroller General of the United States shall have access to all books, accounts, records, reports, files, and other papers, things, or property belonging to or in use by the Department of Hawaiian Home Lands pertaining to such financial transactions and necessary to facilitate the audit.

(Pub. L. 104-330, title VIII, § 822, as added Pub. L. 106-568, title II, § 203, Dec. 27, 2000, 114 Stat. 2895, and Pub. L. 106-569, title V, § 513, Dec. 27, 2000, 114 Stat. 2989; amended Pub. L. 108-271, § 8(b), July 7, 2004, 118 Stat. 814.)

CODIFICATION

Pub. L. 106-568, § 203, and Pub. L. 106-569, § 513, enacted identical sections 822 of Pub. L. 104-330. This section is based on the text of section 822 of Pub. L. 104-330, as added by Pub. L. 106-569, § 513.

AMENDMENTS

2004—Pub. L. 108-271 substituted “Government Accountability Office” for “General Accounting Office” in section catchline.

§ 4242. Reports to Congress

(a) In general

Not later than 90 days after the conclusion of each fiscal year in which assistance under this subchapter is made available, the Secretary

¹ So in original. Probably should be section “4239”.

shall submit to Congress a report that contains—

- (1) a description of the progress made in accomplishing the objectives of this subchapter;
- (2) a summary of the use of funds available under this subchapter during the preceding fiscal year; and
- (3) a description of the aggregate outstanding loan guarantees under section 1715z-13b of title 12.

(b) Related reports

The Secretary may require the Director to submit to the Secretary such reports and other information as may be necessary in order for the Secretary to prepare the report required under subsection (a) of this section.

(Pub. L. 104-330, title VIII, § 823, as added Pub. L. 106-568, title II, § 203, Dec. 27, 2000, 114 Stat. 2895, and Pub. L. 106-569, title V, § 513, Dec. 27, 2000, 114 Stat. 2989.)

CODIFICATION

Pub. L. 106-568, § 203, and Pub. L. 106-569, § 513, enacted identical sections 823 of Pub. L. 104-330. This section is based on the text of section 823 of Pub. L. 104-330, as added by Pub. L. 106-569, § 513.

§ 4243. Authorization of appropriations

There are authorized to be appropriated to the Department of Housing and Urban Development for grants under this subchapter such sums as may be necessary for each of fiscal years 2001, 2002, 2003, 2004, and 2005.

(Pub. L. 104-330, title VIII, § 824, as added Pub. L. 106-568, title II, § 203, Dec. 27, 2000, 114 Stat. 2895, and Pub. L. 106-569, title V, § 513, Dec. 27, 2000, 114 Stat. 2989.)

CODIFICATION

Pub. L. 106-568, § 203, and Pub. L. 106-569, § 513, enacted substantially identical sections 824 of Pub. L. 104-330. This section is based on the text of section 824 of Pub. L. 104-330, as added by Pub. L. 106-569, § 513. Section 824 of Pub. L. 104-330, as added by Pub. L. 106-568, § 203, authorized appropriations for fiscal years 2000 to 2004, instead of fiscal years 2001 to 2005.

CHAPTER 44—NATIVE AMERICAN BUSINESS DEVELOPMENT, TRADE PROMOTION, AND TOURISM

Sec.	
4301.	Findings; purposes. (a) Findings. (b) Purposes.
4302.	Definitions.
4303.	Office of Native American Business Development. (a) In general. (b) Duties of the Secretary.
4304.	Native American trade and export promotion. (a) In general. (b) Coordination of Federal programs and services. (c) Activities. (d) Technical assistance. (e) Priorities.
4305.	Intertribal tourism demonstration projects. (a) Program to conduct tourism projects. (b) Assistance. (c) Infrastructure development.
4306.	Report to Congress. (a) In general.

Sec.

- (b) Contents of report.
4307. Authorization of appropriations.

§ 4301. Findings; purposes

(a) Findings

Congress finds that—

(1) clause 3 of section 8 of article I of the United States Constitution recognizes the special relationship between the United States and Indian tribes;

(2) beginning in 1970, with the inauguration by the Nixon Administration of the Indian self-determination era, each President has reaffirmed the special government-to-government relationship between Indian tribes and the United States;

(3) in 1994, President Clinton issued an Executive memorandum to the heads of departments and agencies that obligated all Federal departments and agencies, particularly those that have an impact on economic development, to evaluate the potential impacts of their actions on Indian tribes;

(4) consistent with the principles of inherent tribal sovereignty and the special relationship between Indian tribes and the United States, Indian tribes retain the right to enter into contracts and agreements to trade freely, and seek enforcement of treaty and trade rights;

(5) Congress has carried out the responsibility of the United States for the protection and preservation of Indian tribes and the resources of Indian tribes through the endorsement of treaties, and the enactment of other laws, including laws that provide for the exercise of administrative authorities;

(6) the United States has an obligation to guard and preserve the sovereignty of Indian tribes in order to foster strong tribal governments, Indian self-determination, and economic self-sufficiency among Indian tribes;

(7) the capacity of Indian tribes to build strong tribal governments and vigorous economies is hindered by the inability of Indian tribes to engage communities that surround Indian lands and outside investors in economic activities on Indian lands;

(8) despite the availability of abundant natural resources on Indian lands and a rich cultural legacy that accords great value to self-determination, self-reliance, and independence, Native Americans suffer higher rates of unemployment, poverty, poor health, substandard housing, and associated social ills than those of any other group in the United States;

(9) the United States has an obligation to assist Indian tribes with the creation of appropriate economic and political conditions with respect to Indian lands to—

(A) encourage investment from outside sources that do not originate with the tribes; and

(B) facilitate economic ventures with outside entities that are not tribal entities;

(10) the economic success and material well-being of Native American communities depends on the combined efforts of the Federal Government, tribal governments, the private sector, and individuals;